

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN DIEGO
3

4

5 Coordination Proceeding)
6 Special Title (Rule 1550(b)).)
7 In re TOBACCO CASES II)
8 This Document Relates to:)
9) JCCP No. 4042
10 The People of the State of)
11 California, and American)
12 Environmental Safety Institute) DEPOSITION OF
13 v. Philip Morris Incorporated,)
14 et al., Los Angeles Superior) THOMAS BONFIGLIO
15 Court, Case No. BC 194217)
16 The People of the State of)
17 California, City of San Jose,)
18 and Paul Dowhall v. Brown &)
19 Williamson Corp., et al., San)
20 Francisco Superior Court, Case)
21 No. 996781)
22)
23 SERVICE LIST "B")
24

15

16 C O N F I D E N T I A L T R A N S C R I P T

17

18 TAKEN ON: Thursday, June 8, 2000

19 TAKEN AT: 401 B Street, Suite 1700
20 San Diego, California

21 REPORTED BY: Jeannette K. Jessup
CSR No. 8573, RPR

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(Whereupon, the following testimony is deemed confidential material and subject to protective order entered by the Superior Court of the County of Los Angeles, State of California and is bound separately.)

(Exhibit 4053 was marked for identification.)

BY MR. MCGUIRE:

Q. Exhibit 4053 for identification says 7-Eleven Marketing Initiatives, February 17, 1999. How would you describe this document?

MR. EATON: Before we go further, I'd like, at this point, to designate this as attorneys eyes only. Both the exhibit and the discussion of the exhibit.

MR. KAMMER: This is under --

MR. EATON: Pursuant to the protective order.

MR. MCGUIRE: We challenge that. We're going to challenge any of the historic information as being for anybody's eyes only. It's old.

BY MR. MCGUIRE:

Q. Is this in the public domain, this document?

A. I'm sorry. I don't know what you mean by public domain.

Q. Is it readily available for people in the company to see?

A. No.

Q. Is it an historic document?

MR. EATON: Vague as to "historic."

THE WITNESS: Is this an historic document?

////

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BY MR. MCGUIRE:

Q. Uh-huh.

A. I'm sorry. I'm not trying to be cute. What do you mean by "historic"?

Q. Does this talk about something -- an accomplished fact?

A. It talks about things that may or may not have become accomplished facts.

Q. Okay. But does it talk about anything that's going to happen in the future?

MR. EATON: Calls for speculation and vague.

THE WITNESS: Doesn't appear to, no.

BY MR. MCGUIRE:

Q. Okay. Does this say R.J.R Marketing Initiatives? Does Philip Morris know what's in this document, if you know?

MR. EATON: Lacks foundation.

THE WITNESS: I don't think so. Specifically.

BY MR. MCGUIRE:

Q. What's the distribution on this document in the company?

A. To me and possibly, depending upon where this was presented, my boss might have been at this meeting.

24 Q. Who else?
25 A. In our company?
26 Q. Yeah.
27 A. Probably no one else.
28 Q. What's the purpose of the document?

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1 A. The purpose of the document is presentation from
2 Reynolds to us about suggested plans for 1999.

3 Q. And did this form the basis of an agreement that
4 was ultimately entered into between you and R.J.
5 Reynolds? By "you," I mean the company.

6 A. I'm sorry. Could you repeat that.

7 Q. Did this document form the basis of an
8 agreement, marketing agreement regarding sale of R.J.
9 Reynolds cigarettes by 7-Eleven stores, both company and
10 franchise?

11 A. Parts of it may have been, yeah, may have been
12 adopted.

13 Q. How will we know which things were adopted and
14 which weren't?

15 A. I could probably tell you that.

16 Q. As we go through it?

17 A. Yeah.

18 Q. Did you participate in receiving this
19 presentation and then determining what would be
20 acceptable for your company?

21 A. Yes.

22 Q. Okay. Did you eventually sign a contract
23 between you and Reynolds regarding how R.J. Reynolds'
24 cigarettes would be marketed in 7-Eleven stores?

25 A. Yes. But I don't think this document goes to
26 that.

27 Q. Okay. What does this document go to?

28 A. This is -- I would call this a promotion plan.

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1 Q. Okay.

2 A. Under an agreement that had already been signed.

3 Q. Okay. So an agreement was signed that had --
4 where the parties agree that the details of how the
5 marketing would be implemented would be developed at a
6 later date. Is that accurate?

7 A. Yeah. I'm not sure details is accurate. It's
8 more than details.

9 Q. How would you --

10 A. Key elements.

11 Q. Key elements would be determined later?

12 A. Right.

13 Q. And then this is their -- this is Reynolds'
14 presentation as to how they think the key elements should
15 be determined; is that accurate?

16 A. Yes.

17 Q. Okay. And you accepted some of their
18 presentation and rejected others?

19 A. I would have to go through the document one by
20 one on this one to see if any or all of it had been
21 accepted.

22 Q. Okay. When it says on the second page, "2Q99,"
23 that means second quarter '99?

24 A. Yes, sir.

25 Q. And a value-added program means what to you?

26 A. Value-added program is generally what we call
27 buy-somes, buy two, get one free, buy two, get one free.
28 Possibly a coupon for price reduction.

1 Q. What's a participation rate?
 2 A. Number of stores that actually participate in
 3 the recommended promotion.
 4 Q. Is there a financial incentive to 7-Eleven,
 5 Incorporated, if based on the number of franchisees that
 6 participate?
 7 A. No, not directly. I mean our contract calls for
 8 us to recommend that they participate and to encourage
 9 recommendation.
 10 Q. How do you do that?
 11 A. Communication of what the value-added offer is,
 12 trying to describe to them what we think it may do in
 13 terms of cement a relationship with their customers, like
 14 being the place to come where there is value. Sales.
 15 Q. Based on your historical experience with these
 16 programs, is that what you mean?
 17 A. Yes.
 18 Q. By sales? Do you basically tell the franchisees
 19 your sales are going to be linked somehow to these
 20 programs, they work?
 21 A. Yes.
 22 Q. Okay. There is an arrow that says "Corporate
 23 Philip Morris Exclusive Accounts." What does that mean?
 24 A. I have to go look at the page.
 25 Q. Okay. We'll get to it then. "Camel 99's
 26 Introduction, Expansion Markets," what does that refer
 27 to?
 28 A. A line extension of a particular packing of

1 cigarettes that had not been available for distribution
 2 in all parts of the country and they were expanding a
 3 distribution and wanted us to recommend the items to our
 4 stores.

5 Q. Going up one, "Doral Ultra Lights, Box 83 and
 6 100." And then says "National Introduction." Is this
 7 also a line extension?

8 A. It's a type of cigarette that prior to that was
 9 only in soft pack. Now being made available in hard box
 10 as well.

11 Q. Box 83, what does that mean?

12 A. 83 is king size. 100 is 100's. It's lengths.
 13 83 millimeter, 100 millimeter.

14 Q. Is there a difference between a Doral Light and
 15 an Ultra Light?

16 MR. EATON: Calls for speculation.

17 THE WITNESS: Once again, my understanding is
 18 it's only in how strong a flavor profile the brand has,
 19 the taste has.

20 BY MR. MCGUIRE:

21 Q. Does lights and ultra lights have that
 22 designation, have something to do with the amount of tar
 23 that the consumer is exposed to in lighting up and
 24 smoking the cigarette?

25 MR. EATON: Same objection.

26 THE WITNESS: I'm not sure.

27 BY MR. MCGUIRE:

28 Q. Do you find the description of light and ultra

1 light to be vague and confusing to yourself?

2 MR. EATON: Same objection.

3 THE WITNESS: My understanding is it's just the
 4 flavor that you get. A strong smoke taste as opposed to

5 a lighter smoke taste.

6 BY MR. MCGUIRE:

7 Q. You agree that this could be confusing to your
8 consumers, as to what the difference between a light and
9 an ultra light is?

10 A. Doesn't seem to be.

11 Q. What do you base that on, your response on?

12 A. There weren't any questions asked.

13 Q. You haven't heard any questions asked. Have you
14 conducted a survey in your stores to determine whether or
15 not the consumer needs to have described for them what,
16 in fact, is the difference between a light and an ultra
17 light? If I want to reduce my exposure to tar, do I go
18 to a light cigarette or an ultra light cigarette, or am I
19 getting the same exposure no matter what I go to, and
20 this light and ultra light isn't going to help me one
21 bit?

22 MR. KAMMER: I object to the form of the
23 question. And also the fact that it exceeds the scope of
24 the topics, and instruct the witness not to answer.

25 BY MR. MCGUIRE:

26 Q. What's the Winston "No Bull" promotion?

27 A. That was tied to a sweepstakes, tied to Nascar
28 event.

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1 Q. And would you explain Item Number 6, what that
2 stands for?

3 A. We'd have to really look at the document.

4 Q. Okay. We have a promotional schedule, the term
5 sku's, s-k-u-s, is used. What does that mean?

6 A. It's a stock keeping unit. It's an item.

7 Q. And what is the stock keeping unit that this
8 would refer to, Winston packs or cartons?

9 A. In this case it would refer to actually two
10 packs.

11 Q. And does VAP through McLane mean value-added
12 price through McLane, the distributor you discussed
13 earlier?

14 A. It's not price, no. It's value-added provider,
15 provided. How do I explain this? Value added. It
16 stands for value added promotion. I'm sorry.
17 Value-added promotion. And what this says is that the
18 stores that purchase through McLanes are recommended they
19 will have available for those stores a Winston offer of
20 \$1 off two packs, which is the nationally recommended
21 7-Eleven offer.

22 Q. Okay. And if you --

23 A. Yeah. Sorry.

24 Q. I'm sorry. Did you finish?

25 A. The stores do not normally -- do not purchase
26 cigarettes -- our stores that do not purchase cigarettes
27 from McLanes, which would be some of our franchise
28 stores, they would have a different offer below them.

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1 Q. Is that the offer right below that?

2 A. Yeah. The Camel, buy two, get one free or
3 possibly, the Winston, buy two, get one free.

4 Q. Does McLane provide the promotional or the
5 buy-down money?

6 A. No.

7 Q. That comes directly from R.J. Reynolds?

8 A. Comes directly from the manufacturer involved,
9 yes.

10 Q. What's PRP stand for under February, as you work
11 your way down that column? Do you see where I am?

12 A. Yeah. Retail -- got to be honest with you, I'm
13 not sure exactly what they call it, but it's a buy-down.
14 It's a price reduction period, I believe is what they
15 call it.

16 Q. Okay. And if we work further down to February,
17 the last column we have POS/PDI. POS is point of sale;
18 is that right?

19 A. Yeah. Synonymous with POP.

20 Q. Okay. Point of purchase, same as point of sale.
21 And what about PDI, what does that mean?

22 A. That would be an insert or a direct mail.

23 Q. To who?

24 A. To consumers.

25 Q. So is this -- how does that work?

26 A. R.J. Reynolds in this case has a mailing list of
27 smokers that they have on file that have given them and
28 provided them with age verification, et cetera, who they

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1 mail announcements to regarding offers and special
2 retail.

3 Q. And does 7-Eleven, Incorporated, its name or
4 corporate logo, appear on this --

5 A. Yeah.

6 Q. -- mailer?

7 A. Yes.

8 Q. Does it basically say during the month of
9 February, if you take this into your local 7-Eleven
10 store, you'll get some benefit in purchasing cigarettes?

11 A. Just an announcement that it's available.

12 Q. So you don't have to take it any place?

13 A. No.

14 Q. You said it's a mailing list of smokers who have
15 been -- I don't remember your exact words, but you said
16 age verified or something like that. What do you
17 understand about that?

18 A. That over the years R.J. Reynolds has developed
19 a mailing list of people who have filled out a form at
20 some point in time indicating they are of age, provided
21 them with copy of the driver's license, et cetera, and
22 have stated and signed that they wanted to receive these
23 types of notifications.

24 Q. Who told you that it involves that procedure?

25 A. R.J. Reynolds.

26 Q. Who at R.J. Reynolds?

27 A. Who? Gosh --

28 Q. J.S. Rumberger?

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1 A. No. This is in there -- they have a -- I can't
2 remember the gentleman's name. There was somebody in
3 charge of their direct mail program in Reynolds.

4 Q. How long ago did that represent -- was that
5 representation made?

6 A. First time, probably about three years ago and
7 has been made in conversations several times since then.

8 Q. So your understanding is, does this apply in
9 California as well?

10 A. I'm not sure. It's restricted in some states,
11 but I'm not sure.

12 Q. Your understanding, though, is that R.J.
13 Reynolds has a list of smokers that they have verified
14 are smokers that they can send promotional material to?

15 A. That's correct.
16 Q. So there would be no excuse for them to send
17 promotional material to anyone else, would there?
18 MR. EATON: Calls for speculation.
19 BY MR. MCGUIRE:
20 Q. Like free cigarettes?
21 MR. EATON: Same objection.
22 THE WITNESS: I don't think they can.
23 BY MR. MCGUIRE:
24 Q. What do you base that on?
25 A. You mean just sampling people?
26 Q. Yes.
27 A. They're not allowed to sample.
28 Q. What do you base that on?

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1 A. What I've been told is what they've agreed to.
2 Q. Who told you that?
3 A. I couldn't give you a name. I think I've heard
4 it from several of the companies that that was one of the
5 things they agreed not to do is sample.
6 Q. Did R.J. Reynolds violate that agreement?
7 A. Not that I'm aware of.
8 Q. Being sued by the attorney general of the state
9 of California for violating that agreement?
10 A. Not that I'm aware of. I have no knowledge of
11 that.
12 Q. Is there someone at 7-Eleven that's kind of
13 checking on their partners in business here to see if, in
14 fact, that they are following the law, so that you would
15 know whether or not the attorney general has determined
16 that they haven't?
17 A. I would assume that our government affairs
18 department would learn of that. But I'm not aware that
19 that's the case.
20 Q. Have you ever asked?
21 A. Asked who?
22 Q. The government affairs department as to whether
23 or not R.J. Reynolds can be trusted to follow what they
24 tell you they're doing, complying with the law.
25 A. I've never made that specific -- I've never
26 asked them that specific question.
27 MS. TUCKER: And also it assumes facts not in
28 evidence. Not that they shouldn't be trusted, but that

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1 he had a conversation with them about that.
2 BY MR. MCGUIRE:
3 Q. Have you read any newspaper articles about the
4 attorney general of the state of California suing R.J.
5 Reynolds Tobacco Company for sending 300,000 cigarettes
6 to unknown addresses or addresses, where they knew
7 nothing about whether there were minors involved or not?
8 A. No.
9 Q. When you go back home, will you ask government
10 affairs whether they know anything about that?
11 A. Yes.
12 Q. Okay. Let's turn to the next page. What does
13 Ex-Red mean, if you know?
14 A. Yeah. They have a brand called Kamel Red.
15 That's actually spelled with a "K," Kamel Red. That
16 particular type of -- or that particular cigarette is not
17 included in the buy-down offers.
18 Q. So that means except Red?
19 A. Yeah.

20 Q. And the rates are what, 30/\$3? How do I
21 interpret that?
22 A. 30 cents a pack, \$3 a carton.
23 Q. Thank you. And TBD, to be determined?
24 A. Yes, sir.
25 Q. Page -- I don't see the one that says 1999 VAP
26 promotions.
27 MR. KAMMER: What's the Bates stamp number?
28 THE WITNESS: I got it.

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1 MR. MCGUIRE: 292.
2 MR. KAMMER: Okay.
3 BY MR. MCGUIRE:
4 Q. What does this -- how do I -- how do you
5 interpret this particular page?
6 A. This is a listing of the number of deals, if you
7 will, that are being reserved, if you will, in
8 anticipation of our stores ordering.
9 Q. So under promotions where they have Camels 99
10 cents/two packs --
11 A. Right.
12 Q. -- does that mean that they have especially
13 packaged two?
14 A. Correct.
15 Q. In a cellophane wrapped package where you buy it
16 for the price of one?
17 A. 99 cents less, right.
18 Q. And under "displays ordered," is that a special
19 display, different from things that are already existing
20 in the store?
21 A. Well, it displays -- really is not a display as
22 it is a prepack, if you will, containing perhaps 20 of
23 those. So a store orders where they get 20 of the
24 two-pack deals.
25 Q. And then they use that to display the item and
26 then sell you two separate packs if you buy it?
27 A. No. They actually are the packs themselves.
28 Q. So 4500?

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1 A. Would be 4500 times -- in this case I believe
2 there were 20 to a display. So that would have been like
3 90,000 deals.
4 Q. Have you seen this display?
5 A. Yes, I did see it.
6 Q. Could you describe it on the record for us,
7 please.
8 A. A -- a carton -- that's not the right word for
9 it. I call it a flat. It's a -- it's a carrier,
10 probably the best closest thing, a carrier that contains
11 20 banded two-packs, the band says 99 cents off regular
12 price when purchasing two.
13 Q. And is this made so that it can be placed on the
14 counter?
15 A. It could be placed on the counter, yes.
16 Q. And where else could it be placed?
17 A. The displays in our stores, we take them out and
18 put them in baskets on the back bar.
19 Q. The back bar being?
20 A. Behind the counter.
21 Q. Okay. Did you sign this letter that's on page
22 293? I'm reading Bates numbers now.
23 A. Yes, I believe I did.
24 Q. Okay. The first sentence says that you intend

25 to move corporate stores participating in a Philip Morris
26 Exclusive Merchandising Program to a dual merchandising
27 program RJR/PM in calendar year 1999. What was the
28 nature of this exclusive merchandising program that

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1 Philip Morris was involved in prior to your executing
2 this agreement?

3 A. We had tested the premise of having only the RDA
4 merchandising/merchandising agreement with Philip Morris
5 in approximately 160 stores, Kansas City market and Utah
6 market. During 1998 we discontinued that test early in
7 1999 and returned those stores to the program that was
8 then recommended for all the other stores, which was a
9 Philip Morris/R.J.R. program.

10 Q. Okay. And it talks about a survey process in
11 the second sentence. What does that mean or refer to?

12 A. Whenever there is an offer like this, we -- the
13 stores must order. We do not do force-outs to stores.
14 So we call it survey, and we send them an order form
15 recommending that they order them. We collect the orders
16 and turn them over to our wholesaler and notify the --
17 the manufacturer involved with the total quantity that
18 will be required.

19 Q. Okay. And let's go to 295. Doral Share of
20 Branded Savings Trend in C/G. What does that mean?

21 A. This is showing R.J. Reynolds, Doral, which is a
22 nonpremium brand, a savings brand if you will, how much
23 of that nonsavings business they were enjoying or they
24 had in the convenience/gas line channel of trade over
25 this time frame.

26 Q. And the percentages along the side. Is that a
27 percentage of sales?

28 A. It's a percentage of their sales within that

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1 segment.

2 Q. Okay. Within the branded savings market?

3 A. Right. Correct.

4 Q. Which is the same as saying the nonpremium?

5 A. Yes. Well, there are -- there is another tier
6 below that, which is -- but -- I don't want to confuse
7 it. Yes.

8 Q. For practical purposes?

9 A. Yes. For practical purposes, yes.

10 Q. Winstons "No Bull" 1999, exciting news. Winston
11 will continue the "No Bull" 5 program during 1999. How
12 long was this program or has this program been in
13 existence?

14 A. I think this is the first I was aware of it.

15 Q. Do you know if 7-Eleven participated before 1999
16 in this program?

17 A. No, we did not.

18 Q. Do your stores currently have a "No Bull" ballot
19 box?

20 A. No.

21 Q. Did you reject participation in this program?

22 A. Yes.

23 Q. Why?

24 A. I just think I -- I call it a nonevent. It just
25 clutters up the counters, and I don't think really would
26 do anything for sales.

27 Q. Did Mr. Rumberger tell you that he thought that
28 this was a good program?

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1 A. Sure.
2 Q. Is he the one that made this presentation to
3 you?
4 A. Yes.
5 Q. Okay. Let's go to 297. What do these numbers
6 reflect? Exactly what they say?
7 A. Yeah. They reflect the various manufacturers'
8 share of sales stated in cartons per week over this time
9 frame. Over the time frame shown.
10 Q. Cartons per week. So if I wanted to know the
11 total full price of cartons sold by 7-Eleven -- and,
12 again, is this corporate and franchise?
13 A. Yes.
14 Q. -- for the month of February, I would take the
15 full price number at 144 and multiply by four?
16 A. Yeah, basically, yeah.
17 Q. Okay.
18 A. Now, these are purchases. Not necessarily
19 sales, but directionally they're close to sales.
20 Q. What's the difference? If apparently there's a
21 significant difference, you wouldn't have pointed it out
22 to me between a purchase and a sale.
23 A. I wanted to make sure these aren't stipulated as
24 being the exact sales figures. These are based on our
25 purchases.
26 Q. I see. You hope that there's eventually a
27 one-on-one relationship between purchase and sales,
28 right?

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1 A. Yes. Over time there would be very close.
2 Q. But as of right now this shows what you bought?
3 A. Right.
4 Q. Hoping to sell?
5 A. Correct.
6 Q. And then we have under -- we have total full
7 price. And then you have brand savings?
8 A. Right.
9 Q. And then what's the next?
10 A. That is that third tier I referenced, saying
11 that there was a third tier, which is what you might call
12 black and white or generic, which we do very little
13 business in, as you can see.
14 Q. What's the difference between brand savings and
15 savings? The next one, I think, is savings, right?
16 A. Brand of savings would be a brand that has a
17 national brand recognition. And probably has some type
18 of advertising support from the manufacturers, as opposed
19 to a low-end priced cigarette with very little brand
20 recognition or support.
21 Q. BAT. Does that refer to Brown & Williamson?
22 A. Yeah. British American Tobacco, which is Brown
23 & Williamson.
24 Q. And then the last one I see is "Industry." How
25 does that relate to all the numbers that we saw above?
26 A. It's only selecting certain key brand out of
27 there and doing some comparisons.
28 Q. I see. It's the same thing with the listing

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1 below -- maybe I'm not reading this right. Under where
2 it says R.J.R., 30.9, do you see that next to the --
3 yeah?
4 A. I'm sorry. R.J.R., 30. -- 30.9, yes. Okay.
5 Q. What does that reflect?

6 A. That is their share of --
7 Q. Total sales?
8 A. No. Of just in the savings brand area.
9 Q. Okay. So that would be branded --
10 A. No. I'm sorry.
11 Q. Go ahead.
12 A. That number is R.J.R.'s total cartons, out of
13 the total cartons here, both branded and premium.
14 Q. Okay. If I want to determine the total number
15 of cartons purchased by 7-Eleven corporate stores and
16 franchise stores in the country, I would add total full
17 price to total brand savings to total black and white or
18 generic?
19 A. You would look at -- that's done where the
20 industry figure -- industry line is. That is that number
21 there, 164.9.
22 Q. Okay. And then what is the separate 20.2?
23 That's not part of the total.
24 A. How much of that is in savings.
25 Q. I see.
26 A. Which is a combination of the 17.9 and 2.3.
27 Q. Okay.
28 A. Added to the total full price, which is 144.7.

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1 Q. And then the last listing by industry is how it
2 breaks down by particular brand?
3 A. Certain brands within that, yes.
4 Q. All right. 304, just has this little -- the
5 last page, the "No Bull" Winston. Is there something on
6 this page?
7 A. You know, I'm sorry. I really don't know. I'll
8 have to go back and look. There had to be something
9 there.

10 (Whereupon, this ends the testimony deemed
11 confidential and subject to protective order entered by
12 the Superior Court of the County of Los Angeles, State of
13 California.)

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1 (Whereupon, the following testimony is deemed
2 confidential material and subject to protective order
3 entered by the Superior Court of the County of Los
4 Angeles, State of California and is bound separately.)

5 BY MR. MCGUIRE:

6 Q. Okay. Why don't you go to the next document.
7 We have the May 3 -- May 3, 2000 Swisher, or Bonfiglio to
8 Swisher at Reynolds, to Swisher. Is Swisher -- I think
9 you told me she works for R.J. Reynolds; is that correct?

10 A. Correct.

11 (Discussion off the record.)
12 (Exhibit 4054 was marked for identification.)
13 MR. KAMMER: 4054 for identification and I'm
14 marking Bates Numbers 305 through 322 is that what you
15 think 54 is?

16 MR. MCGUIRE: Yes.

17 MR. KAMMER: I'm not certain these are going to
18 be assembled correctly. So I'm going to ask you those
19 questions.

20 BY MR. MCGUIRE:

21 Q. What is this document?

22 A. This is a copy of a presentation that I did to,
23 as it says, to our division managers, division
24 merchandisers and market managers, field consultants. We
25 have a weekly video conference with these people. And it
26 was a presentation made to them, more or less, to provide
27 them the rationale for us selecting Dorals as our house
28 brand, if you will, which is a way of saying our -- the

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1 brand that we're going to feature at less than premium
2 prices.

3 0. What was the purpose of doing that?

4 A. In order for them to communicate to our stores
5 why we are taking this strategy, as well as to give them
6 information so they can support our recommendation to the
7 franchisees. So they will, in fact, follow our
8 recommendations, carry Dorals, et cetera.

9 Q. Why did you select Doral as the house brand?

10 A. A business decision based on the fact that it's
11 got brand equity. It's -- we're able to negotiate an
12 agreement with Reynolds that allows us to sell them at a
13 very attractive price in the marketplace. Compared to
14 other non brand -- nonpremium brands.

15 O. Was that a strategy that's used in 1998?

16 A. No. No.

17 Q. When did you use it?

18 A. Began in July of '99.

19 Q. Is it still in effect?

20 A. Yes, it is.

Q. Has Doral always been the house brand?

22 A No

Q. -does the house brand change from time to time?
A. We actually have never had a house brand before

25 this.

26 O. Okay

27 A. Yes.
28 Q. And is there any reason to expect that the house

1 brand will change in t

2 A. Probably not.

3 Q. Okay. And who

4 A. R.J. Reynolds.
5 Q. So R.J. Reynolds, have they paid anything above
6 and beyond what they normally would have paid in order to
7 be the house brand?

A. Just part of our total RDA agreement, one of the elements of that agreement was that they would be the house brand.

10 house brand.
11 Q. I see. And did they pay for any marketing of
12 the concept that 7-Eleven would have a house brand and
13 you could get it for less? And it's a premium cigarette,
14 but we're selling it at less than premium prices, things
15 like that?

16 A. They're not paying us any funding to do that.
17 Q. Are they advertising or paying for advertising?
18 A. Specifically for 7-Eleven?
19 Q. Yes.
20 A. No. Other than they are doing some mailers on
the brand.
22 Q. The same type of mailers that you previously
described?
24 A. Yes.
25 Q. To their internal list of smokers?
26 A. Correct.
27 Q. And what was the goal here? To increase the --
28 well, what was the goal?

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1 A. To increase our sales in nonpremium brands where
2 we were underdeveloped -- underdeveloped, based on
3 looking at total industry. We were selling less of this
4 product than the rest of the industry.

5 Q. Okay. And how did you know that by selling more
6 of it at a cheaper price would not adversely affect the
7 bottom line?

8 A. Well, that was our hypothesis. We didn't -- you
9 never do until you try it.

10 Q. So you figured that by lowering the price, we'll
11 sell more cigarettes and make up for the differential
12 between what we were selling Doral before we made it
13 house brand and after? And then continue to make more
14 profits, such that making the house brand would
15 ultimately, bottom line, end up leading to more profits
16 on the sale of these cigarettes?

17 A. I wouldn't state exactly that way. I would say
18 that --

19 Q. State it how you think is correct.

20 A. An opportunity for us to offer a product to a
21 customer that perhaps is not buying from us today because
22 we didn't have this type of value.

23 Q. And was this presentation that you made to your
24 employees and franchisees and managers one that you first
25 heard given to you by R.J. Reynolds?

26 A. Parts of it.

27 Q. Is this document something that you prepared
28 wholly for internal use and with your own assets, company

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1 assets?

2 A. Not all of it. There are a couple of pages in
3 here which were from documents that they had provided to
4 me.

5 Q. Like which ones?

6 A. Page 7, page 9. That's it. Page 7 and 9 were
7 actually documented. They provided --

8 Q. Page 7 and 9?

9 A. -- pages 7 and 9.

10 Q. Okay. Is it your understanding and experience
11 that Doral, GPC and Basic are competitors?

12 A. Yes.

13 Q. Who manufactures GPC?

14 A. Brown & Williamson.

15 Q. Who manufactures Basic?

16 A. Philip Morris.

17 Q. Are all three of those brands considered premium
18 brands?

19 A. No.

20 Q. Are any of them?

21 A. No.
22 Q. What is brand equity?
23 A. I guess I would describe it as consumer
24 awareness of a brand and confidence in a brand.
25 Q. How do you know that Doral has brand equity?
26 A. Because of its current market share that enjoys
27 in the industry sales that it currently has.
28 Q. What does this mean, that "R.J. Reynolds has

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1 national" -- on page 10 now. "R.J. Reynolds has national
2 support committed to Dorals." Did you explain what you
3 mean then by the three bullets that are below that?

4 A. Yes, sir.
5 Q. This national advertising in magazines with a
6 budget over \$7 million in 2000, do those include
7 magazines that are purchased primarily by minors?

8 A. No.
9 Q. How do you know that?
10 A. The magazines that I'm aware of that they're
11 advertising in are magazines, considered adult magazines.

12 Q. By whom?
13 A. By myself.
14 Q. Do you know that Philip Morris announced two
15 days ago that they were pulling their advertising from
16 magazines that had a readership, a minority readership of
17 15 percent or more?

18 A. No.
19 Q. Do you know that R.J. Reynolds said they weren't
20 going to do that?

21 A. No, I didn't.
22 Q. Can you call somebody in those two companies to
23 find out whether that's true?

24 A. Sure.
25 Q. Who would you call?
26 A. I'd probably call my national contacts.
27 Q. Who would that be?
28 A. Jamie French and Jean Swisher.

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1 Q. Okay. If what I told you is true, would that
2 make any difference as to whether or not you used Doral
3 or not?

4 A. I don't know.
5 Q. Are you aware of a group in Washington, D.C., a
6 national organization called Smoke Free Kids?

7 A. No.
8 Q. Are you aware of a program or a study published
9 by Smoke Free Kids that indicates that the tobacco
10 industry has increased its advertising budgets in
11 magazines that go to primarily minority -- not minority,
12 minor readership?

13 A. No.
14 MS. TUCKER: Objection; lacks foundation.

15 BY MR. MCGUIRE:

16 Q. Next page, do you know one way or the other, as
17 to whether the fact that R.J. Reynolds packs their
18 cigarettes tighter to make them burn slower results in
19 more side-stream smoke per cigarette?

20 MS. TUCKER: Objection; calls for an expert
21 opinion outside the scope of this witness.

22 THE WITNESS: No.

23 BY MR. MCGUIRE:

24 Q. Do you know what side-stream smoke is?
25 A. No.

26 Q. It's the smoke that comes off the end of a
27 cigarette when you're not puffing it and is considered
28 very dangerous, more dangerous than mainstream smoke that

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1 you blow out of your mouth. Having said that, do you
2 know whether or not the packing and slower burning of the
3 Doral cigarettes makes them more dangerous to
4 nonconsumers, bystanders, than other cigarettes that
5 don't burn as slow?

6 A. No.

7 MS. TUCKER: Objection; calls for an expert
8 opinion outside the scope.

9 MR. MCGUIRE:

10 Q. Have you ever inquired on that subject with R.J.
11 Reynolds to see if their cigarettes are any more
12 dangerous than their competitors as it relates to
13 environmental tobacco smoke?

14 A. No.

15 Q. What does pages 10 -- excuse me -- pages 11 and
16 represent?

17 A. These are pages from a publication that, once
18 again, is sent to smokers on R.J. Reynolds' mailing list.

19 Q. Have you seen the color version of this?

20 A. Yes, I have.

21 Q. Is it three color or more?

22 A. I'm not sure.

23 Q. Does every page of their brochure have a surgeon
24 general's warning on it?

25 A. I don't know.

26 Q. Do you know if it's supposed to?

27 A. No, I don't.

28 Q. Have you ever called 1-800-74-Doral to get more

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1 information on Doral?

2 A. No.

3 Q. Do you know what Doral & Company is?

4 A. It's my understanding it's just basically Doral
5 smokers who are asked to be on the mailing list.

6 Q. For what purpose?

7 A. To receive information about special offers.

8 Q. When it says "To start getting even more from
9 Doral," what does that mean? Even more what?

10 MS. TUCKER: Objection; calls for speculation.

11 BY MR. MCGUIRE:

12 Q. Does it mean tar or nicotine, more disease, or
13 more something else?

14 A. I think it means getting more value.

15 Q. By value you mean either coupons or something
16 like that that would reduce the cost of the product, or
17 some other free thing that you would get that would be an
18 added benefit for the purchase of a cigarette, or neither
19 of those things?

20 A. Or as this one says, buy CD software for \$5.95,
21 which I'm not an expert, but I assume is a pretty good
22 price to pay.

23 Q. I can't read, and maybe my old eyes, that little
24 tiny thing that's underneath, join Doral & Company. It
25 says something about -- something phone calls restricted
26 to smoking?

27 MS. TUCKER: To smokers 21 years of age or
28 older.

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1 MR. MCGUIRE: I'm sorry. Would you say it

2 again.

3 MS. TUCKER: What I read. I mean the witness
4 can read it, but the document speaks for itself, which
5 says "phone calls restricted to smokers 21 years of age
6 or older."

7 BY MR. MCGUIRE:

8 Q. Okay. We, this morning, talked about minors
9 being 18 years. Assuming that minors are 18 years or
10 younger, does your company sell cigarettes to people
11 between 18 and 21?

12 A. Assuming that 18 is the legal age, yes.

13 Q. And then the next page 315, Bate number, are
14 these other examples of this magazine that is sent to
15 Doral smokers?

16 A. Oh, I'm sorry. I've been looking at the wrong
17 page when you were talking to me. I was looking at that
18 other page.

19 Q. We finished that one.

20 A. Okay. This is the one we were just talking
21 about.

22 Q. No wonder that was hard to read. You were
23 trying to read the one "Doral Holiday Table"?

24 A. Yeah.

25 Q. Oh, wow. This is another reason why I should
26 put on the record why we get a laser copy of these
27 exhibits and/or an original if they're available. That
28 would be my first request, if not a color or laser print

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1 of all of these things.

2 MR. KAMMER: Understood.

3 BY MR. MCGUIRE:

4 Q. Thank you. Do you know what the CD-Rom software
5 order form involves?

6 A. Other than what it says here, that's all I know.
7 That it's an offer that's being made by sending in pack
8 seals for Dorals.

9 Q. What is -- I'm now at page 14, Mr. Bonfiglio --
10 "SRP," standard retail price?

11 A. Suggested.

12 Q. Suggested retail price. "APSD"?

13 A. Average per store day.

14 Q. Gross profit, "GP."

15 A. Yes.

16 Q. And that was average per store?

17 A. Day.

18 Q. Day. Okay. What's a store day?

19 A. A single store's sales for the day. We take
20 that times the numbers of stores to get the total sales
21 for the day.

22 Q. Then you divide it by the number of stores to
23 get the average?

24 A. Yes.

25 Q. Okay. And what is the "LDU"? What does that
26 stand for?

27 A. Lowest distribution unit, which means the
28 minimum quantity that you could purchase.

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1 Q. And "turns" are what?

2 A. An estimate based on estimated sales and the
3 quantity that you have to buy, how long it will take you
4 to sell through, and how many times a year that
5 merchandise, therefore, turns.

6 Q. Has 7-Eleven marketed the big box?

7 A. No. It's not -- it's shipping in July.
8 Q. And this is for Doral Lights, correct?
9 A. There's actually two versions. Lights and full
10 flavored.
11 Q. Is there a Doral Ultra Light, or is that someone
12 else's cigarette?
13 A. No. There is a Doral Ultra Light.
14 Q. And we talked about this this morning. So I
15 won't go back on it. I assume you don't know the
16 difference between light and ultra light?
17 A. No.
18 Q. And I wasn't trying to be insulting by that.
19 A. No.
20 MR. KAMMER: We ate lunch. We didn't talk about
21 that.
22 BY MR. MCGUIRE:
23 Q. I'm sure you didn't. I'm now on the next page
24 16, "For shipment the week of July 17th, SLIN, or survey
25 UIN." What is that?
26 A. SLIN is what's carry over from when we were
27 Southland, called Southland, S.L., item number. It's an
28 item number in our database.

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1 Q. Okay. And the survey is --
2 A. It's a universal item number which is the
3 wholesaler's number for that item.
4 Q. Do you use several wholesalers or just the one
5 that's in Texas that we talked -- McLane?
6 A. McLanes is the wholesaler that all corporate
7 stores purchase from, is the recommended wholesaler for
8 all franchisees.
9 Q. Okay. And are they -- they're a wholesaler for
10 several tobacco companies?
11 A. Yes. They could basically carry them all.
12 Q. What about franchise stores, do they -- can they
13 use anybody they want for wholesale?
14 A. They can use other suppliers, yes.
15 Q. But it's recommended they use McLane?
16 A. That's correct.
17 Q. Do they get benefit from using McLane, do they
18 get the company's price?
19 A. Yes. We like to think there's a benefit, yes.
20 Q. And in volume there's usually a benefit?
21 A. Yes, and product selection. We just think they
22 provide the best service.
23 Q. Okay. What's the distribution of this magazine
24 that R.J. Reynolds sends out?
25 A. Oh, the numbers?
26 Q. Yeah.
27 A. I don't know.
28 Q. No one's ever told you when you have a

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1 readership?
2 A. Yes. Somewhere along the line someone's told
3 me, but I couldn't quote it right offhand. I don't know.
4 Q. Do you have any idea? Are we talking about
5 hundreds of thousands or are we talking about thousands?
6 A. I don't know.
7 Q. On page 320 where they had the authorized
8 temporary sign, do the manufacturers have to have your
9 approval for temporary signs?
10 A. Yes.
11 Q. On franchise stores as well as company stores?

12 A. No, for corporate stores. Yes, for franchise
13 stores. We recommend that these are the only signs.
14 Q. Do you recommend that your franchisees contact
15 you in the event that their requested by the cigarette
16 manufacturers to display something that hasn't come
17 through the recommended channels?
18 A. No.
19 Q. Is this an example of what might be a dangler?
20 A. Yes.
21 Q. I can't make out 18. But it's basically an
22 example of how they'll identify Doral as your lowest
23 price saving brand?
24 A. That's correct.
25 Q. And is this a POP element that is recommended by
26 the company to the franchise stores?
27 A. Yes.
28 Q. Is this a POP element that I would find in

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1 stores here in San Diego?
2 A. I would hope so.
3 Q. Page 19 is cut off on the left-hand side?
4 A. Yes.
5 Q. But I think I could make out who we're talking
6 about. This breaks down where your stores are located?
7 A. That's correct.
8 Q. And what does the ordering number mean, ordering
9 column? Excuse me.
10 A. That's the number of stores that ordered the
11 last recommended promotion.
12 Q. What's wrong with the northeast? They just
13 don't get the word, or are they all independent or what?
14 A. They are -- that is a franchise division. And
15 they buy a lot from wholesalers that we have a difficult
16 time tracking information from, for one thing.
17 Q. Have you ever found that the franchise stores
18 were able to cut a better deal than you were able to do
19 on behalf of the corporate stores?
20 A. Once in a while.
21 (Exhibit 4055 was marked for identification.)
22 BY MR. MCGUIRE:
23 Q. The next document for identification is, we will
24 mark as 4055. It's dated August 5th, 1998. It has do
25 with this case and it's to Beverly Lopez from Arthur J.
26 Stevens.
27 MR. KAMMER: They probably need one.
28 ////

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1 BY MR. MCGUIRE:
2 Q. There's one right there. Have you ever seen
3 this before?
4 A. No, sir.
5 Q. Is Ms. Lopez in-house counsel?
6 A. Yes, sir.
7 Q. Do you know what "indemnify" means?
8 A. My interpretation would be hold harmless.
9 Q. Do you know if Lorillard selected the counsel
10 that are defending you in this case?
11 A. No, I don't.
12 (Exhibit 4056 was marked for identification.)
13 BY MR. MCGUIRE:
14 Q. Okay. 4056 for identification is a Key
15 Findings. Can you identify this document as to who
16 prepared it?

1 BY MR. MCGUIRE:

2 Q. Let's go to the next one. 4057. 327 to 341.

3 And you may want to take your position here, Bill. But

4 save you. What does C/G National mean?

5 A. Convenience/gasoline national numbers.

6 Q. So that would be -- is it everybody, including

7 7-Eleven or --

8 A. We would be included in those numbers, yes.

9 Q. Who is your chief competitor?

10 A. Depends on the market area.

11 Q. California?

12 A. Probably AM/PM.

13 MS. TUCKER: I'm going to jump in here because I

14 wasn't really given a chance to jump in. I'm assuming

15 this document is -- we haven't established this, but is

16 something that is from a marketing meeting between

17 7-Eleven.

18 THE WITNESS: That's correct.

19 MS. TUCKER: And one of the tobacco

20 manufacturers. So I would request if that, in fact, is

21 what this is, that this document and any testimony

22 regarding it be marked confidential pursuant to the
23 protective order.

24 BY MR. MCGUIRE:

25 Q. Let's find out whether it is or not. What is
26 this document?

27 A. This was a document that was presented at a
28 meeting in Winston-Salem with myself and two other

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1 members of our merchandising department, my boss and his
2 boss.

3 Q. And what company was presenting this?

4 A. R.J. Reynolds.

5 Q. And what individual or individuals were
6 representing R.J. Reynolds?

7 A. Brian Stockdale, whose title, I believe, is
8 National Sales and Marketing for R.J. Reynolds. And then
9 I will tell you that we had the Camel brand managers.
10 And I would have to go back and look at my -- see if I
11 could find the names. I'm not -- I couldn't give you the
12 names specifically.

13 Q. As I read this graph, it would indicate that
14 Southland or 7-Eleven sells more cigarettes than all
15 other competitors combined.

16 A. No.

17 Q. Okay. Help me on this because it looks to me
18 like, for example, in October '98, that C/G National sold
19 six.

20 A. That's a share.

21 Q. Oh, they had a six?

22 A. Camels and C/G were 6 percent of the total
23 sales, whereas in 7-Eleven stores they were 6-1/2 percent
24 of total sales.

25 Q. Okay. There we go. So this is the share of
26 Camels in these two outlets?

27 A. That's correct.

28 Q. What are the well-known equities of Camels?

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1 A. I don't know. Well-known equities? Just a
2 brand name. Consumer awareness of the brand name.

3 Q. How does that differ from the strong brand
4 profile?

5 A. I don't think it does.

6 Q. Does the presenter have different things to say
7 about these two bullets and just can't remember how he
8 differentiated them?

9 A. He probably differentiated them. To my mind,
10 there's not much differentiation.

11 Q. And he also has growing acceptability. What was
12 that about? What was his point there? More people are
13 smoking Camels?

14 A. I think he's saying that Camels are gathering a
15 bigger share of the business.

16 Q. Are these Camel Filters and Camel Regular or
17 Full Camels?

18 A. All Camels. I think that was -- I'm sorry, what
19 was the question? Maybe I answered it wrong.

20 Q. Whether this growing acceptability -- what these
21 factors driving Camel's performance related to the entire
22 brand filters and nonfilters?

23 A. Yes.

24 Q. What was the "create talk value"? What was that
25 all about?

26 A. I couldn't tell you.

27 Q. Did he tell you how they were planning to grow
28 the volume and share and to recapture the brand's

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1 momentum?

2 A. There was discussion about their advertising
3 campaigns for Camels.

4 Q. Was there a discussion about Joe Camel --

5 A. No.

6 Q. -- and his demise?

7 A. No.

8 Q. Was there actually no discussion about that?

9 A. No.

10 Q. Okay. There was no discussion. And I said --
11 was there absolutely no discussion?

12 A. Absolutely no discussion about Joe Camel. No,
13 I'm sorry.

14 Q. I guess what I was looking for was a "yes" to my
15 negative answer.

16 A. Okay.

17 Q. I understand you now. You didn't talk about Joe
18 Camel at all?

19 A. Absolutely not.

20 Q. Did you talk about Joe Camel's successor?

21 A. No.

22 Q. Did you talk about their advertising program,
23 what they were going to be doing, what it would look
24 like?

25 A. Yes.

26 Q. Whether they would use cartoons again, whether
27 they'd use people you can't tell how old they are?

28 MS. TUCKER: Objection; compound. Will you let

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1 the witness answer the question.

2 BY MR. MCGUIRE:

3 Q. For example?

4 A. None of those topics were discussed.

5 Q. What did they discuss, if anything, about their
6 advertising program?

7 A. What they would be doing in advertising, which,
8 you know, featuring Turkish tobacco, one thing is a
9 product attribute. They showed us mock-ups of magazine
10 advertising that was planned.

11 Q. Okay. And did they give you -- I don't know if
12 it's in here. Did they give you something to take with
13 you at those mock-ups?

14 A. I don't believe so. I think that was just --
15 they brought in boards and showed them. I don't think we
16 had anything that we took back with us, no.

17 Q. And you have no idea what create talk value
18 refers to?

19 A. No.

20 Q. Who has to have competitive level and coverage
21 of promotion? I'm now on the next page.

22 A. R.J. Reynolds would like to have the ability to
23 have participation in their activities.

24 Q. Is that what coverage of promotion means?

25 A. Yeah.

26 Q. Okay. And when they wanted to get greater
27 differentiation, what does that mean?

28 MS. TUCKER: Objection.

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1 BY MR. MCGUIRE:

2 Q. As far as you understand.

3 A. As I understand it?
4 Q. Yeah. Based on what they told you.
5 A. To make Camels more of a top of mind intent to
6 purchase item than another brand.

7 Q. What type of image were they going to create or
8 were they presenting to the purchaser?

9 MS. TUCKER: Objection; calls for speculation.
10 Lacks foundation.

11 BY MR. MCGUIRE:

12 Q. Just want to know what they told you, not
13 necessarily what the truth was.

14 A. To a certain extent it was a retro kind of
15 campaign.

16 Q. What did you understand that to mean, or what
17 did they tell you it meant?

18 A. That's hard to explain. If you could imagine a
19 cigarette girl but with a cell phone. Kind of a retro,
20 but yet relevant, is the way I think they described it.

21 Q. I don't know what a cigarette girl looks like, I
22 guess. What do you see -- what do you mean by a
23 cigarette girl?

24 A. A nightclub with a tray of cigarettes.

25 Q. I see.

26 A. But with a cell phone. So it was more relevant
27 to today.

28 Q. I see. Did they tell you why that they thought

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1 this retro idea was going to help them become top of mind
2 and grow their product?

3 A. Not because their ad agency -- no, I mean, in
4 fact, Camel has a lot -- have brand equity. It goes back
5 a long ways and I guess reaching back.

6 Q. 1913.

7 A. Is that what it was?

8 Q. That's just part of their retro advertising,
9 isn't it?

10 A. I don't recall that particular part of it.

11 Q. Fine blend of Turkish and domestic tobaccos.

12 How much poster boards did they show you?

13 A. I think three.

14 Q. Did one involve a '50s/60s teenager, big
15 pompadour, combing his hair with a pack --

16 A. No.

17 Q. -- of Camels?

18 A. No. No.

19 Q. Did one involve a guy with a fedora hat on and a
20 rain coat, looked like Humphrey Bogart? Although these
21 were all cartoons?

22 A. No, no cartoons.

23 Q. These were actual pictures that you say?

24 A. I guess drawings might be a better word.

25 Q. Isn't that what they actually used, drawings?

26 Isn't that actually what they're using now in this retro
27 program?

28 A. I believe so, yeah.

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1 Q. And same kind of cartoonish thing as Joe Camel?

2 A. No.

3 Q. Are they people instead of animals?

4 A. No.

5 Q. What was your reaction to the retro advertising
6 program when they presented it to you?

7 A. None of this stuff, really --

8 Q. Impacted?
9 A. I'm more interested in what they're doing, in
10 terms of value addeds, and what they're going to offer,
11 value as opposed to advertising.
12 Q. Were there going to be any changes in the
13 product?
14 A. They have a new product or a new blend if you
15 want.
16 Q. What's that?
17 A. Turkish Gold.
18 Q. Okay. Did they talk anything about marketing a
19 safer cigarette to you?
20 A. No.
21 Q. Not during this program, but have they told you
22 anything about their new safe cigarette?
23 A. I know a little bit about Eclipse.
24 Q. Are your stores going to carry it?
25 A. No.
26 Q. Why not?
27 A. It's not available to retail, as far as I know.
28 Q. Well, if it were available, you're not in any of

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1 their test market areas?
2 A. No.
3 Q. Have you asked about it?
4 A. I've asked about it, yeah. And they just said,
5 you know, they're just not ready to move forward with it.
6 Q. Did they say why?
7 A. No.
8 Q. How did you know about Eclipse?
9 A. I think first time is because, I think, my
10 Reynolds rep smokes them.
11 Q. And what about packaging changes, during this
12 presentation for the Year 2000, what type of packaging
13 changes were there going to be?
14 MS. TUCKER: Objection.
15 THE WITNESS: I don't recall any.
16 MS. TUCKER: Calls for speculation, lacks
17 foundation.
18 BY MR. MCGUIRE:
19 Q. You don't remember him talking about any
20 packaging changes?
21 A. It may not -- I'm not sure what meeting, because
22 I know they have one or two brands that they're going to
23 make available in hard packs that weren't before. I'm
24 not sure if that was discussed at this meeting or not.
25 Q. Did they speak about having tins?
26 A. Yes. Yes, that's right. Yes, they did talk
27 about having tins.
28 Q. And what about the experience, what were they

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1 telling you their -- or what was the substance of the --
2 A. I don't think there is any substance to it.
3 That's my opinion.
4 Q. Well, I know that your opinion may be different
5 than theirs, but what do you remember them telling you,
6 if anything?
7 A. I don't remember them telling me anything.
8 Q. Okay. So this now gets into some of the details
9 of the differentiate the image type thing. Simple,
10 posterised format. Fun and irreverent Camel personality.
11 Tell me about that. What's that about?
12 MS. TUCKER: Objection; lacks foundation, calls

13 for speculation.

14 THE WITNESS: I'm not sure what that means. The
15 only thing I picked up out of this was the combination.
16 Like I said, kind of a recalling the Camel Heritage, if
17 you will. But adding in a currency to it with cell
18 phones and that. I think there were several other type
19 things like that.

20 BY MR. MCGUIRE:

21 Q. Did they tell you that Camel smokers are
22 irreverent and therefore likely to heed warnings?

23 A. No.

24 Q. At least that's what they were looking for was
25 irreverent customers?

26 MS. TUCKER: Objection; nonsensical question.

27 Are you asking him did they tell him that?

28 ////

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1 BY MR. MCGUIRE:

2 Q. Yeah. Yeah. Did they come out and tell you
3 that they were looking for -- or who they were looking to
4 market were smokers who would not heed warnings appearing
5 on the package?

6 A. No.

7 Q. Or anywhere else? No?

8 A. No.

9 Q. And what does it mean that something -- the new
10 campaign is flexible and allows for maximum integration?
11 What do you understand that means?

12 A. I don't have any understanding of what that
13 means.

14 Q. And how were they going to leverage
15 authenticity?

16 A. I don't know.

17 Q. What's this gentleman's name again that gave you
18 this presentation?

19 A. I think it was the Camel brand manager.

20 Q. And you told me his name before?

21 A. Well, no, I didn't. Brian Stockdale is not the
22 Camel brand manager. He is, I believe, their national
23 sales -- national sales manager. I don't remember the
24 Camel brand manager. As a matter of fact, I think it's a
25 lady, come to think of it.

26 Q. Is she from New York, the lady?

27 A. No.

28 Q. Is she from Winston-Salem?

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1 A. Yes, sir.

2 Q. What's the SFX arenas?

3 MS. TUCKER: What page are you on?

4 MR. MCGUIRE: 337.

5 THE WITNESS: 337?

6 MR. MCGUIRE: Yeah.

7 THE WITNESS: I don't know.

8 BY MR. MCGUIRE:

9 Q. And what is New Camel Cash?

10 A. New Camel Cash is a save UPC codes and you get
11 certain things. It's, I guess, a customer loyalty
12 program between the customer and Reynolds.

13 Q. If you save -- what did you say?

14 A. I think they save the UPC codes off the packs.

15 Q. Okay. Send them in for --

16 A. Yeah. Something out of a catalogue, yeah.

17 Q. Like green stamps used to be --

18 A. Yeah, I guess so.
19 Q. -- direct mail? What were they telling you
20 about their ability -- it's the same thing. We have a
21 list of smokers, and we direct mail things periodically,
22 including our magazine, et cetera?
23 A. I don't think the magazine -- I think the
24 magazine goes through Doral, I believe.
25 Q. Do you know if R.J. Reynolds has a magazine
26 that's focused on all of their brands?
27 A. I don't know that.
28 Q. SOM, next page. The objective is to increase

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1 Camel SOM?
2 A. Share of market.
3 Q. Share of market. Was it advantageous for you to
4 have them test some of these packaging or promotional
5 ideas in 7-Eleven first?
6 A. I believe so.
7 Q. And have you agreed to jointly develop
8 promotions that leverage 7-Eleven's equity in programs?
9 A. Yes.
10 Q. What's involved in those programs?
11 A. Well, we tested the Camel Keg.
12 THE REPORTER: I'm sorry?
13 THE WITNESS: K-e-j.
14 BY MR. MCGUIRE:
15 Q. K-e-g?
16 A. K-e-g.
17 Q. Anything else?
18 A. No.
19 Q. Anything else that you are scheduled to test
20 market?
21 A. Yes, a Doral five-pack.
22 Q. And if they were willing to provide you with the
23 cigarettes, would you test market the Eclipse?
24 A. I don't know.
25 Q. Have you asked about the Accord?
26 A. No, I have not.
27 Q. Do you know what that is?
28 A. I do know what it is.

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1 Q. Okay. Are there any other tobacco manufacturers
2 that are manufacturing or test marketing currently
3 cigarettes that are claimed to be safer?
4 MS. TUCKER: Objection; calls for speculation.
5 THE WITNESS: I don't have -- I don't know of
6 any of them making that claim, and I don't know of any
7 others.
8 BY MR. MCGUIRE:
9 Q. You don't know of anybody making that claim?
10 A. I'm not aware of that claim being made.
11 Q. When they told you about Eclipse, they didn't
12 tell you it was a safer cigarette?
13 A. No.
14 Q. What did they tell you it was?
15 A. Produces less smoke.
16 Q. You just reduced -- you just deduced that it
17 meant a safer cigarette from less smoke?
18 A. No, I didn't deduce it. No.
19 Q. Do you think, as you sit here now, that if a
20 cigarette has less smoke, it will be safer?
21 MS. TUCKER: Object. Are you done with your
22 question?

23 MR. MCGUIRE: Yeah.
24 MS. TUCKER: Okay. I'm just going to state
25 generally that I've had a problem throughout this
26 deposition where the witness and the questioner seem to
27 be running over each other. To be candid, I don't know
28 why the court reporter hasn't said anything before. So I
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1 apologize that I keep interrupting, but there's been a
2 lot of people running over each other. So I'm just going
3 to state -- set that out there. So hopefully from this
4 point out, to have a clear record, everyone can wait a
5 minute.
6 But my objection is that that question is
7 outside the scope of this witness's both area of
8 expertise and what he's here to testify about today, and
9 calls for an expert opinion. And we probably need to
10 have the question reread because of my long statement
11 there. I apologize.
12 MR. MCGUIRE: I think he answered it before you
13 interrupted.
14 MS. TUCKER: So I don't know if the witness
15 needs the question reread, or did he answer the question?
16 MR. MCGUIRE: I thought he did.
17 MS. TUCKER: I apologize. I didn't hear that.
18 BY MR. MCGUIRE:
19 Q. Let's go to 340. Camel Cash Trip Sweepstakes.
20 Is this something that you're going to run in your
21 stores? And by your stores, I mean either one.
22 A. No.
23 Q. Did you advise them at the time that you didn't
24 want to run sweepstakes, or this particular one at least?
25 A. Yes, I did.
26 Q. Did they tell you why they thought running
27 sweepstakes was a good idea?
28 A. They probably did, but I couldn't remember
155
1 exactly what it was.
2 Q. Are you an ally of R.J. Reynolds tobacco company
3 in the sale of cigarettes?
4 A. Can you define "ally."
5 Q. Yes. Someone who you create an alliance with.
6 MS. TUCKER: Objection; vague, lacks foundation,
7 calls for speculation.
8 THE WITNESS: I don't know how to answer that
9 question. Do we have a merchandising agreement with them
10 as we do with two other companies? So to that extent,
11 yes.
12 BY MR. MCGUIRE:
13 Q. Okay. Do they call it an alliance?
14 A. I think they call all of their programs with all
15 of their retailers an alliance, if I recall. If I
16 remember correctly. Like --
17 Q. All their retailers are their allies?
18 MS. TUCKER: Objection; misstates the witness's
19 testimony.
20 BY MR. MCGUIRE:
21 Q. Are you in partnership with Philip Morris in the
22 sale of cigarettes?
23 MR. KAMMER: Objection; calls for a legal
24 conclusion.
25 THE WITNESS: We formerly were a signatory to a
26 merchandising or an RDA agreement called retail masters
27 and now retail leaders. So I would say no.

1 BY MR. MCGUIRE:

2 Q. Okay. 4058 for identification is a document
3 dated February 3, 2000, 7-Eleven and Philip Morris
4 Partnering for Success. What is this?

5 A. This was a presentation that was made to --
6 actually it was not. I did not participate, I don't
7 think, in this particular meeting. It was with vice
8 president of non-food merchandising. And senior vice
9 president of merchandising at the time would have been
10 David Podeschi who was the vice president non-foods. And
11 Gary Rose, senior vice president of merchandising.

12 MS. TUCKER: I'll just say, for clarity, that we
13 ask to continue to have this portion of the depo marked
14 confidential in reference to this next exhibit, and
15 discussion regarding this exhibit as well.

16 BY MR. MCGUIRE:

17 Q. If you turn to Bates 348, there is a scale
18 that's marked "Dif versus YAG." What does that stand
19 for?

20 A. Difference versus year ago.

21 Q. And if you go to the next page, it says
22 "Industry Volume Comparison" in billions of units. What
23 units, packs?

24 MS. TUCKER: Objection; it's my understanding
25 this witness wasn't even at the meeting where this
26 document was discussed.

27 MR. MCGUIRE: I know, thank you. Your objection
28 is noted.

1 BY MR. MCGUIRE:

2 Q. Now, please answer the question.

3 A. I believe they talk about single cigarettes when
4 they talk about units, I believe.

5 Q. So this would indicate that as of September 1998
6 they had sold -- the industry had sold -- or is this just
7 7-Eleven had sold 7.3 billion cigarettes?

8 A. Right.

9 Q. And the following year as of the same time they
10 sold 7.1 billion cigarettes?

11 A. That's correct. I believe that's what they
12 represent.

13 MS. TUCKER: So I don't keep needing to
14 interrupt any questions regarding this document, I'll
15 object to as calling for speculation and lacking
16 foundation as to this witness.

17 BY MR. MCGUIRE:

18 Q. Have you received a similar presentation at
19 other times regarding similar representations on volume
20 of cigarettes sold?

21 A. Yes. Similar.

22 Q. Okay. Is that what you're relying on to answer
23 my questions, as to what units were being referred to in
24 this particular chart?

25 A. Yes.

26 Q. Okay. And if we turn to the next page, this is
27 in millions of cartons. Is there 20 packs to a carton?

28 A. Ten.

1 Q. Ten packs to a carton, and 20 cigarettes to a
2 pack?

3 A. Correct.

4 Q. And this is volume of 7-Eleven sales by various
5 manufacturers in 1999, and then comparing to what it was
6 in '98; is that right?
7 A. That's correct.

8 Q. I don't know if it's in any one of these
9 documents someplace, but do you know what share of the
10 cigarette sales market 7-Eleven has?

11 A. No, I don't.

12 Q. Whether you sell 10 percent or 80 percent?

13 A. No, don't know.

14 Q. If you go to 353 at the bottom, there is a
15 source that says "PM Stars Chain Aggregate Database."
16 What do you understand that means?

17 A. This is shipment information from wholesalers
18 reported to Philip Morris.

19 Q. And this Stars Chain Aggregate, that's the
20 database -- or the data collection source that Philip
21 Morris uses?

22 A. I believe it's their -- yeah, their database.

23 Q. Okay. Next page source is "MSA Shipments 6mm
24 ending September 1999." What do you understand that to
25 mean?

26 A. I'm not entirely sure. MSA means metropolitan
27 statistical area. But I have to look at this more
28 closely to understand what it means.

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1 Q. And if you go to the next page, the source of
2 that is PM Chain Aggregate. How is that different from
3 the PM Stars Chain Aggregate, if you know?

4 A. I don't know that it is different.

5 Q. If we go to 360, this apparently is a chart
6 involving promotional spending. How do you read that?

7 A. This is Philip Morris's representation of the
8 amount of money they have put against their brands in our
9 company through buy-down funding or others, other
10 methods.

11 Q. Would that include advertising or would it just
12 be --

13 A. No.

14 Q. -- promotional?

15 A. Just promotional.

16 Q. So as I read this, they have put \$17.8 million
17 into buy-downs for Marlboros?

18 MS. TUCKER: Objection; the document speaks for
19 itself.

20 THE WITNESS: Yes.

21 BY MR. MCGUIRE:

22 Q. And does the next column over indicate that the
23 next year they put in 20 million?

24 MS. TUCKER: Same objection.

25 THE WITNESS: Yes.

26 BY MR. MCGUIRE:

27 Q. Okay. And in 1999 does that mean they're going
28 to put in 71 million?

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1 MS. TUCKER: Same objection.

2 THE WITNESS: Yes.

3 BY MR. MCGUIRE:

4 Q. And in the year 2000 they're going to put in 85
5 million?

6 MS. TUCKER: Same.

7 THE WITNESS: That's their --

8 MS. TUCKER: Calls for speculation.

9 THE WITNESS: That is their estimate.
10 BY MR. MCGUIRE:
11 Q. Okay. And when we get for the year 2000
12 potential, are they also going to now -- instead of just
13 promoting Marlboro, they're going to promote Basic as
14 well?
15 A. Correct.
16 Q. What's OPB, OPB stand for?
17 A. Other premium brands.
18 Q. That's what I thought. So in the year 2000 they
19 are representing that they will spend \$85 million on
20 advertising Philip Morris products -- not advertising,
21 promoting Philip Morris products, and 92 million
22 promoting other premium brands?
23 A. No. No.
24 Q. What does that mean then with those two numbers
25 together?
26 A. We, at this point in time, were on retail
27 leaders program Level A. And at Level A, that is the
28 amount of funding that would be provided for buy-downs,
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1 if you will. They wanted us to go to a higher level,
2 basically almost an exclusive. And then there would be
3 more funding for Marlboros.
4 Q. I see. Let's turn to the next page. CPW, what
5 does that stand for?
6 A. Cartons per week.
7 Q. And let's go to the five P's on the last page,
8 363. Philip Morris is stating here that they can grow
9 the average carton sold per week from 190 to 250 at
10 7-Eleven by position, product promotion, presence and
11 people. I know you weren't part of this particular
12 presentation, but do you know from other experience with
13 Philip Morris as to what these mean or meant at the time
14 that the representation was made?
15 A. In a general sense, yes.
16 Q. Just give me what your understanding is.
17 A. Position would be the positioning of the
18 products within a display.
19 Q. Okay. Product is self-explanatory.
20 A. Product is having the correct product.
21 Promotion is participating in the buy-downs and the
22 value-added offers, et cetera.
23 Q. Okay.
24 A. Presence is POP signage.
25 Q. Okay.
26 A. And I'm not exactly sure with people, other than
27 just everybody kind of working together.
28 (Discussion off the record.)

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1 (Exhibit 4059 was marked for identification.)
2 MR. MCGUIRE: Exhibit 4059 is entitled "Trade
3 Council," and it's Thursday, April 2nd, 1998.
4 MS. TUCKER: We'll keep my spiel here. We'll go
5 with our same continuing designation of this as
6 confidential because it appears that it was a
7 presentation by Philip Morris on the bottom right-hand
8 corner designation.
9 MR. KAMMER: You realize I'm going to search --
10 BY MR. MCGUIRE:
11 Q. What is this document?
12 A. This is a document that was given to me after
13 Gary Rose attended a Philip Morris trade council

14 retailers meeting in New York.

15 Q. What was the subject matter of the meeting, as
16 you understand it?

17 A. They have the agenda business updates and what's
18 going on in -- in the industry.

19 Q. Does Philip Morris have these meetings annually,
20 or more frequently than that?

21 A. They were doing them twice a year.

22 Q. And Mr. Rose, does he routinely attend them?

23 A. He had routinely attended them prior to that,
24 and it was Dennis Potts who was vice president for
25 merchandising, would attend.

26 Q. Have you ever attended any?

27 A. No.

28 Q. And is this document given to all attendees?

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1 A. I believe it is.

2 Q. Is this document given to all retailers that
3 attend?

4 A. I believe so.

5 Q. Is a confidentiality agreement signed by
6 everyone that attend indicating that they will preserve
7 this document, keep it confidential, not disclose it to
8 anybody?

9 A. I don't know.

10 Q. Did Mr. Rose tell you, when he gave you this
11 document, that you had to put it in a room without a fax
12 machine, a telephone or any other means of communication,
13 keep it confidential?

14 A. No.

15 Q. Do you know what the source of all this, I guess
16 the sources are indicated in the bottom of each view
17 graph; is that correct?

18 MS. TUCKER: Objection; calls for speculation.
19 The document speaks for itself other than that.

20 THE REPORTER: I'm sorry. I didn't hear an
21 answer. Did you answer?

22 THE WITNESS: I believe the source is what's
23 listed on here, to the best of my knowledge.

24 BY MR. MCGUIRE:

25 Q. If you go to page 385, Box Smoker Share By Age.
26 What is the share that's the highest? What age group is
27 that?

28 MS. TUCKER: Objection; lacks foundation, calls

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1 for speculation and the document speaks for itself.

2 THE WITNESS: To be honest with you, I can't.

3 BY MR. MCGUIRE:

4 Q. I can't read it, let alone hear it. Do you know
5 what that is? I can't see anything before -- I know 24
6 is the last number. But I can't make out whatever it is
7 before that.

8 MS. TUCKER: Counsel, it's entirely
9 inappropriate to have this witness try to read a document
10 for you because maybe the Xerox cannot come off well,
11 given that he's already testified that he wasn't even at
12 the meeting when this document was presented. So that's
13 the basis for my objection.

14 MR. MCGUIRE: You can just object. Nobody cares
15 right here what the basis of it is. If I do, I'll ask
16 you. Just make the objection. And I'm particularly not
17 interested what you think is appropriate or not.

18 MS. TUCKER: All right, Counsel. Well, there's

19 really no need for the rude tone in your voice. I wasn't
20 trying to be rude.

21 MR. MCGUIRE: Well, I wasn't either. Just
22 direct.

23 MS. TUCKER: Let me just clarify, and this will
24 take one minute while you're looking through the
25 document. The reason I explained the basis for my
26 objection was, rather than to keep stating my objections
27 over and over, perhaps the questions would be a little
28 more eloquently phrased.

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1 MR. MCGUIRE: Thank you for your --

2 MS. TUCKER: But I'll just state the objections
3 from now on.

4 MR. MCGUIRE: Sorry for being ineloquent.

5 BY MR. MCGUIRE:

6 Q. What are C-stores?

7 MS. TUCKER: Objection; calls for speculation,
8 lacks foundation.

9 THE WITNESS: Convenience stores is generally
10 what they're referred to.

11 BY MR. MCGUIRE:

12 Q. In this graph do you know whether or not
13 Southland or 7-Eleven is included within the C-store?

14 A. I'm sorry. What graph are we on, sir?

15 Q. For example, 388.

16 A. I can only assume so, yeah. Let me retract
17 that. I'm sorry. The source is AC Nielsen. So I'm not
18 sure that we would be represented in there because, to
19 the best of my knowledge, we do not provide information
20 to AC Nielsen.

21 Q. If you go to page 393, do you know what Philip
22 Morris Tracking refers to under the source?

23 A. No.

24 (Exhibit 4060 was marked for identification.)

25 BY MR. MCGUIRE:

26 Q. Exhibit 4060 for identification is a similar
27 document, only this one is dated 1999.

28 Do you know what this document is?

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1 MS. TUCKER: Again, I'll continually request
2 that we have this portion marked confidential as to this
3 exhibit.

4 THE WITNESS: It is a similar deck of material
5 that, I believe, was provided to Gary Rose at another
6 trade council meeting.

7 BY MR. MCGUIRE:

8 Q. Did Mr. Rose provide this copy to you?

9 A. Yeah, I believe so.

10 Q. Did you review it at or about the time you had
11 it?

12 A. Yes, briefly.

13 Q. Did you have any questions about what it meant?

14 A. Not really.

15 Q. Did you know what it meant?

16 A. In general.

17 Q. On what basis did you know what it meant?

18 A. My ability to read and comprehend.

19 MS. LONG: Can you all speak up, please.

20 BY MR. MCGUIRE:

21 Q. Did it include your experience in the business?

22 A. That's probably an element of it, yes, sir.

23 Q. Regular brand OOS.

24 MS. LONG: What page are you on?
25 MR. MCGUIRE: 424.
26 BY MR. MCGUIRE:
27 Q. What does OOS stand for?
28 A. Commonly referred to out of stock.

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1 Q. Was Philip Morris -- is it your interpretation
2 of what one of the messages was in the presentation that
3 you shouldn't be out of stock? You should stock enough
4 of the brands that your customers want?

5 A. Yes.

6 Q. Going to 402. Talk about Marlboro average net
7 pack prices. Do you know what accounts for the price
8 increase between July of 1998 and January of 1999, almost
9 50 percent -- well, 50 cents a pack?

10 A. July of '98 to -- cost increase.

11 Q. Is this cost increase to you that you passed on
12 to the buyer?

13 A. That's correct.

14 Q. Do you know what -- do you have any idea if
15 there was a cost increase to the manufacturer that they
16 passed on to you?

17 A. No.

18 Q. Was there any type of tobacco blight, or
19 something like that, that would have affected the cost of
20 tobacco leaves?

21 A. No, not that I'm aware of.

22 Q. Does this represent the average retail price
23 across the country?

24 A. I believe that's what it's purported to
25 represent, yes, sir.

26 Q. Do you know if this price increase would -- it
27 says "net pack prices." Does that mean it's the price
28 before retail, or are these reflected in retail prices?

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1 A. These are reflected in retail prices.

2 Q. In California there was Proposition 99 or
3 Proposition 10, maybe. It was what added a 50 cent per
4 pack tax on. Do you know if that is included in here?

5 A. Yes, I forgot that. Yes, that would be part of
6 the impact, yes.

7 Q. Do you know if other states have done the same
8 thing?

9 A. There have been state excise taxes in some
10 states, yes.

11 Q. Does the purchaser pay that 50-cent tax?

12 A. The end purchaser?

13 Q. Yeah.

14 A. In effect, yes.

15 MS. TUCKER: Objection, belatedly, too.

16 Incomplete hypothetical and vague.

17 (Exhibit 4061 was marked for identification.)

18 BY MR. MCGUIRE:

19 Q. Let's go to the next document. 4061 for
20 identification. "Building business at 7-Eleven," January
21 7, 2000. Is this a 7-Eleven-generated document?

22 A. No, sir.

23 Q. Who generated this document?

24 A. Philip Morris.

25 Q. Okay.

26 MR. MCGUIRE: I assume we're going to have
27 Philip Morris generating this document.

28 MS. TUCKER: I know. I heard. I was just

1 looking very quickly at the document. Well, I'll just
 2 move things along. I haven't had a chance to look at the
 3 document, but I'm assuming it's a kind of marketing plan.
 4 So we'll, of course, mark this portion and this exhibit
 5 as confidential.

6 BY MR. MCGUIRE:

7 Q. How did you come in possession of this document?

8 A. This one, to the best of my recognition --
 9 recollection, was a meeting between myself and Jamie
 10 French where he made this presentation.

11 Q. Did he make the presentation at or about the
 12 time the document's dated?

13 A. I believe so.

14 Q. And what was the purpose, as you understood it,
 15 of the presentation?

16 A. More or less a business review, current
 17 situation analysis.

18 Q. What was the goal as you understood it?

19 A. Generally to employ what would be considered
 20 best practices in terms of carrying brands that are in
 21 demand to point out some possible pricing opportunities
 22 that we might have, request some consideration for
 23 perhaps some point of purchase material.

24 Q. In other words, he wanted you to consider some
 25 point of purchase material?

26 A. Yes.

27 Q. Some point of purchase material that would
 28 promote Philip Morris?

1 A. Correct.

2 Q. Turn to page 348.

3 MR. KAMMER: 348?

4 MR. MCGUIRE: I'm sorry, 438.

5 BY MR. MCGUIRE:

6 Q. What does this tell you?

7 A. This is a discussion about what is seen as some
 8 difficulties in getting new item introductions into our
 9 stores, as timely as Philip Morris feels they should be.

10 Q. Okay. And one of them was inconsistent ordering
 11 practice; is that right?

12 A. Correct.

13 Q. What does that mean?

14 A. They don't feel our stores do a real good job of
 15 ordering.

16 Q. And apparently you didn't use all the Marlboro
 17 cartons you could have used in the buy one, get one free
 18 promotion; is that an example?

19 A. That's correct.

20 Q. And you just told me what OSS was and I forgot.

21 A. Out of stock.

22 Q. "Out of stock during new brand launches and
 23 price promotions." Now, did he have a solution to these
 24 practices in order to help solve these problems?

25 A. He had some suggestions.

26 Q. Okay. And what's the NPI?

27 A. NPI is our new -- is actually new product
 28 information system or process where we notify stores of

1 new items, give them the ordering information, and ask
 2 them to place orders.

3 Q. Now he wanted it to be done from a central
 4 source, rather than to go to your stores?

5 A. He wanted 7-Eleven to basically do automatic
6 distributions.
7 Q. And he wanted that to happen in your franchise
8 stores, as well as your corporate stores?
9 A. Yes, ultimately.
10 Q. And did you tell him that you couldn't do it for
11 the franchise stores, that they have to agree with what
12 you decide might be good; you can only suggest, not
13 compel?
14 A. Well, I did more than that. I just told him
15 basically it's not our approach to do distribution even
16 to corporate stores. The store manager is responsible
17 for it.
18 Q. What is the FOA?
19 A. Franchise owners association.
20 Q. Next page, what is the Marlboro exterior
21 core-plas, c-o-r-e - p-l-a-s sign look like?
22 A. What page are we on?
23 Q. 439.
24 A. What does it look like? It's a sign, these are
25 approximate dimensions. I believe 2 feet wide by 3 feet
26 high. That it would be mounted to a pole or some other
27 way on the exterior of the store, or someplace on the
28 store parking lot.

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1 Q. Okay. Turn to the next page 440, and what does
2 EDLP stand for?
3 A. Every day low price.
4 Q. What were the next steps that he discussed with
5 you as indicated on 441?
6 A. The implementation of some of his
7 recommendations.
8 Q. Anything else?
9 A. No.
10 Q. Did you agree to implement any of the
11 recommendations?
12 A. No. We agreed to test using outdoor signage in
13 Florida. And this is a typo. It wasn't 2000, June 2000,
14 this month to see if, in fact, it created additional
15 sales over what we normally get. We are going to test a
16 Marlboro five-pack offer in one market area.
17 Q. Now, other than R.J. Reynolds and Philip Morris,
18 has anyone else made similar type presentations to you or
19 to Mr. Rose or someone else who came back to you and
20 said, "Here's what they're suggesting we do in
21 merchandising and promoting and marketing cigarettes in
22 our stores or our franchise stores"?
23 A. No. We have had some -- some meetings with
24 Brown & Williamson along similar lines, but no.
25 Q. Have they created a document like any of these?
26 A. I don't think so. No.
27 Q. We talked about the fact that you went back to
28 Winston-Salem and had Reynolds make a presentation to you
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1 about their new brands and their image and their
2 marketing and their advertising, et cetera. Has Brown &
3 Williamson done a similar type presentation?
4 A. No.
5 Q. Has Philip Morris done a similar type of
6 presentation?
7 A. Yes.
8 Q. Is what they've done not -- I didn't see what a
9 similar type presentation were in these materials. Do

10 you think there is one in this stack here someplace?
11 A. Not exactly the same method, no.
12 Q. Anything similar?
13 A. I guess this one would be.
14 Q. Give me the Bate numbers.
15 A. I'm sorry.
16 Q. That's all right.
17 MR. KAMMER: 466.
18 MR. MCGUIRE: Okay. So we'll take it a little
19 bit out of order. 466 to 505 we'll mark as Exhibit 4062.
20 (Exhibit 4062 was marked for identification).
21 BY MR. MCGUIRE:
22 Q. And, again, I know it's probably self-evident,
23 but just to keep the record straight, what is this
24 document?
25 A. I guess you would call it a business -- one
26 against a business review. And, actually, this is the
27 introduction of a new retail leaders program that was
28 being made available by Philip Morris.

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1 MS. TUCKER: Counsel, can I just clarify, I
2 couldn't tell. Was the witness indicating this document
3 was created by Philip Morris?
4 THE WITNESS: Yes.
5 MS. TUCKER: So, then again, we'll mark this
6 portion of the exhibit as confidential.
7 BY MR. MCGUIRE:
8 Q. How did you come in contact with this document.
9 A. This was presented to me. I believe I was the
10 only one that it was presented to at that time by Jamie
11 French.
12 Q. Was it presented at or about the date of the
13 document, December of '99?
14 A. Yes, sir.
15 Q. What did he tell you was going on in the
16 marketplace, as best you can recall?
17 A. That sales in the industry there was still a
18 decline. That Philip Morris was outperforming the
19 industry, I believe. That C-store sales were not
20 declining at the same rate that they were in some other
21 channels of trade. And that this new -- some of the new
22 elements in one of the retail leaders program was
23 something that would probably be advantageous to
24 consider.
25 Q. What is the category approach?
26 MS. LONG: What page are you on?
27 MR. MCGUIRE: Same page. Number 2.
28 THE WITNESS: In broad terms it just means

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1 looking at the entire category, all brands, looking, I
2 guess, where the bang is managing the category. Category
3 management, if you will.
4 BY MR. MCGUIRE:
5 Q. Page 4, there's RL and NRL. What do they stand
6 for? Lower right-hand corner.
7 A. Boy. I'm sorry. I don't -- I don't recall.
8 Q. And is the cartons per week column in millions,
9 millions of cartons per week?
10 A. No. That's actually cartons per week. Average
11 per store cartons per week.
12 Q. Okay. So 128 Philip Morris cartons per store
13 per week sold in the United States?
14 A. I may have to come back -- I'm sorry. Now, do I

15 recall what this means?

16 Q. Okay.

17 A. This is a comparison showing how stores who are
18 on a retail leaders program with Philip Morris outperform
19 stores that are not on a retail leaders program.

20 Q. Okay. And then am I right this is -- are you
21 correct that this is 219 cartons per week?

22 A. Per week.

23 Q. Per store?

24 A. Per store. But that's not -- I'm sorry. I
25 think you asked me before if that was what nationally the
26 number would be.

27 Q. Yeah.

28 A. And it wouldn't. It would be a combination of

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1 the two, depending how many stores were on a program and
2 how many weren't. Somewhere between those two numbers.

3 Q. Did Mr. French explain to you -- I'm referring
4 now to page 7 -- what the purpose of the legislative
5 information hotline was, last bullet?

6 A. Yes.

7 Q. And what was his explanation?

8 A. A way for someone to phone in the discovery of
9 gray market cigarettes in a retailer.

10 Q. Would you explain what that term means.

11 A. Gray market is cigarettes that are manufactured
12 for export that somehow find their way back into the
13 United States.

14 Q. When they're manufactured for export, are they
15 manufactured in the same way, as far as you know, as
16 cigarettes sold here?

17 MS. TUCKER: Objection; calls for --

18 MR. MCGUIRE: For consumption.

19 MS. TUCKER: I'm sorry. Objection; calls for
20 speculation.

21 THE WITNESS: I have been told that sometimes
22 the formulation is somewhat different.

23 BY MR. MCGUIRE:

24 Q. Who told you that?

25 A. Probably -- I can't -- I couldn't -- I'm not
26 sure I could positively identify the person. But I
27 believe I've been told that by many people within all
28 three major cigarette companies I deal with there are

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1 some different taste, if you will, to some of their
2 products shipped to other countries based on preference
3 there.

4 Q. Is there a tax avoidance as well with gray
5 market cigarettes?

6 A. Yes.

7 Q. And gray market cigarettes are something that
8 the manufacturer wants to avoid?

9 A. Yes.

10 Q. As you understood it?

11 A. Yes.

12 Q. And the government wants to avoid?

13 A. Yes.

14 Q. And the retailer wants to avoid?

15 A. Legitimate retailers.

16 Q. Okay. Would the retailer profit by selling gray
17 market cigarettes somehow?

18 A. Yes.

19 Q. Because he could save the tax money?

20 A. Correct.
21 Q. Okay. By saving the tax money, I mean the tax
22 money, instead of going to the government, would go in
23 his pocket or per pocket?
24 A. Correct.
25 Q. Let's go to page 8, new plans. What does that
26 first bullet refer to, those various initials?
27 A. These are -- boy, these are just their, I guess,
28 acronyms for their different levels of retail masters --

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1 retail leaders, which, since then have been changed to
2 ABCDEF, if I recall right.

3 Q. Okay. And what is CPL?
4 A. That was -- that was -- I couldn't tell you what
5 CPL was, but there were four levels of retail leaders.
6 There was a CL, a PM, a KS, and a WH. Those were levels
7 that you could opt to participate in.

8 Q. All right. Let's go to the next bullet.
9 "Enhancements and Clarifications," "Step Up
10 Merchandising" means what to you?

11 A. I don't think we discussed that.

12 Q. Does that have a meaning to you?

13 A. No.

14 Q. Okay. "Signage Clarifications," by that, does
15 that mean they were clarifying the types of signs that
16 could be used per their written agreement, prior written
17 agreement?

18 A. More clarifying what types of signs other
19 manufacturers would -- you could have from other
20 manufacturers, if you were on their program.

21 Q. Okay. In other words, eliminating problems with
22 having other manufacturers' cigarettes in your stores?

23 A. No. The original leaders program had some
24 restrictions on the amount of signage from other
25 manufacturers that could be present. And it was not --
26 it was -- it was fairly restrictive and not very clear in
27 its definition. The new program is a little less
28 restrictive, or less restrictive, and it's more clearly

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1 defined.

2 Q. What are channel strips?

3 A. Channel strips are long, thin strips that go
4 into a molding on the front of a shelf.

5 Q. They serve what purpose?

6 A. Brand identification, price callout.

7 Q. I see. They're strips that have some sign or
8 something on them?

9 A. That's right.

10 Q. If you go to page 12, is it your understanding
11 that the CPL's referred to there are levels of
12 participation that you could opt to be involved with?

13 A. Yes.

14 Q. What does it mean, Court Ordered Permanent
15 Signage Modifications, at CPL2?

16 A. When Philip Morris introduced their original
17 retail leaders program, I believe, R.J. Reynolds,
18 Lorillard and Brown & Williamson eventually all joined
19 together in trying to, I guess, sue Philip Morris for
20 restriction of trade, I believe. That their contract
21 requirements were somehow not -- I'm not -- once again,
22 that's where I get -- somehow not legitimate. And I
23 guess they got a court injunction against some of the
24 signage restrictions that were in there.

25 Q. And the bullet that says "The objective of Youth
26 Smoking Prevention." And that's all caps, is Youth
27 Smoking Prevention a program that Philip Morris was
28 sponsoring?

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1 A. Yes.

2 Q. And what's its objective, if you know?

3 A. Make sure that cigarettes are not sold to anyone
4 not of legal age, and to educate the consumer.

5 Q. How does this program work? Is something done
6 by Philip Morris, or is something done by you, or the
7 both of you together?

8 A. There's a requirement that you either use
9 certain age-restricted POP's, come of age POP, or you
10 have a program of your own. But you always have the POP
11 posted talking about the need to verify age, et cetera.

12 Q. Next page. "Improved line of sight definition"
13 supposed to improve youth access prevention. How does
14 that work?

15 A. I think it's just more clearly defined how the
16 merchandise needed to be displayed behind the counter.

17 Q. Are your present agreements in 2000 with Philip
18 Morris governed by this share calculation methodology
19 that's outlined on page 14?

20 A. Yes.

21 Q. And on the various levels described on page 15?

22 A. That's correct.

23 Q. If you go to page 16, what does the "PM provided
24 fixtures" refer to?

25 A. It spells out if you're on a program with Philip
26 Morris, and if you elect to use fixturing they provide,
27 what fixturing they will provide. Basically, it says
28 they will provide fixturing for their products.

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1 Q. What does that mean, fixtures?

2 A. Display fixtures behind the counter, shelving,
3 et cetera.

4 Q. Has Philip Morris provided you with a contract
5 that you told them you cannot comply with because it
6 doesn't make any sense, because you don't get their
7 displays and fixtures, you have your own shelving and
8 things like that?

9 A. No. We were able to work that out.

10 Q. These pages that go on from 489 that show
11 shelving and signage, are these shelves, back-bar-type
12 shelves that you use in your stores?

13 A. No.

14 Q. Is this just an exemplar of what you could do if
15 you use their fixtures?

16 A. Correct.

17 Q. There's different types of -- keeps going for
18 several pages. Are any of these fixtures that are used
19 in any of your stores, corporate or franchise?

20 A. I'm sorry. I'll have to give you a rather long
21 answer to that. We have about 200 stores where we have
22 Philip Morris fixtures currently that were installed back
23 in 1998, similar to these. All the rest of our stores we
24 installed our own fixtures, which in some ways are
25 similar. We intend to replace the Philip Morris fixtures
26 sometime this year with our own.

27 Q. Okay. If you go to page 19. "Added Flexibility
28 For Retailers, Optional Enhanced Header." A header again

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1 is a sign that advertises a product; is that right?
2 A. Yes.
3 Q. When they say it "Communicates the category to
4 the adult smokers," what does "category" mean in that
5 context?
6 A. My take away from that is it communicates the
7 cigarette category.
8 Q. Okay. And what's the brand message of various
9 cigarettes?
10 A. Marlboros, Camels.
11 Q. What's the message that that brand provides?
12 MS. LONG: Object; speculation.
13 MS. TUCKER: Lacks foundation.
14 THE WITNESS: I guess that's just that you have
15 Marlboros or Camels.
16 BY MR. MCGUIRE:
17 Q. What's the Reserved Growth Fund? I'm referring
18 now on page 24.
19 A. Reserve Growth Fund is funding to support
20 buy-down activity that is over and above the standard
21 number of weeks in an agreement.
22 MR. MCGUIRE: Okay. Is everybody making it
23 okay? Anybody want a break, or should we continue to try
24 to get this thing done? We haven't put much of a dent in
25 a lot of papers here.
26 MR. KAMMER: I'm sure Tom is.
27 THE WITNESS: I'm okay.
28 MR. MCGUIRE: I'm trying my best. It is a lot

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1 to cover. Anyway, if anybody, including you, want to
2 have a break, and I'm not saying that this will help, but
3 just please, just tell me. It's not meant to be a
4 marathon.

5 (Exhibit 4063 was marked for identification.)

6 BY MR. MCGUIRE:
7 Q. Okay. 4063, May 10, 2000 memorandum. Did you
8 prepare this?

9 A. I shared in the preparation of this with our
10 legal department.

11 Q. Was this memorandum sent to all of the stores,
12 including the franchise stores?

13 A. It was sent to our division managers, with
14 request that it be provided to all stores, yes, and
15 franchisees.

16 Q. What's a Plan-O-Gram?

17 A. A schematic, an outline of placement of product.

18 Q. If you turn to the last page, the last, second
19 to last paragraph, does that mean that all of the stores
20 make \$10 -- almost \$10,000 a year just by virtue of
21 participating in the RDA programs?

22 A. That's correct.

23 Q. Do they make any money on top of that in terms
24 of -- is the goal, hopefully, that he will also make
25 additional profits on top of that because of
26 participating in the RDA program?

27 A. In terms of sales, yes.

28 (Exhibit 4064 was marked for identification.)

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1 BY MR. MCGUIRE:
2 Q. Yeah. 4064, May 1, 2000, can you identify this
3 sir.
4 A. Yes. This is a letter that I sent out to my
5 division merchandisers who are responsible for the

6 cigarette category in each division.
7 (Exhibit 4065 was marked for identification.)
8 BY MR. MCGUIRE:
9 Q. Okay. What is 4065?
10 MR. KAMMER: Don't forget, I can't number them
11 at this point until you tell me what you're looking at.
12 MR. MCGUIRE: 446 through 454.
13 THE WITNESS: This is the actual retail leaders
14 program agreement.
15 BY MR. MCGUIRE:
16 Q. Did you sign this?
17 A. This was signed by Gary Rose, Vice President,
18 Senior Vice President of Merchandising.
19 Q. You recognize his signature?
20 A. Yes, I do.
21 Q. Is the document complete, as best you can --
22 best you know?
23 A. I think there are two front pages here. I think
24 these are duplicates.
25 Q. Other than the two front pages, which makes it
26 more than complete, is there anything that is obvious to
27 you or apparent to you that has been left off of this
28 document?

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1 A. I don't believe so.
2 Q. If you go to the last page, Exhibit C, under
3 volume, is that cartons per week per store or just
4 cartons per week?
5 A. Cartons per week per store.
6 (Exhibit 4066 was marked for identification.)
7 BY MR. MCGUIRE:
8 Q. 4066, 455 through 458. Could you describe what
9 this document is.
10 A. Yes. This was a summary of my recommendations
11 about participating in a different level of the Philip
12 Morris RDA agreement, which they sent to the vice
13 president of non-foods merchandising and senior vice
14 president of merchandising.
15 MR. MCGUIRE: What's the last Bate number there,
16 Bill?
17 MR. KAMMER: What do you mean by last?
18 MR. MCGUIRE: The last one we did.
19 MR. KAMMER: 458.
20 MR. MCGUIRE: 458?
21 MR. KAMMER: I mean the -- when you say the last
22 one --
23 MR. MCGUIRE: I'm sorry. 4066 is the -- what's
24 the last Bate number of that?
25 MR. KAMMER: 458 -- 455 through 458.
26 MS. TUCKER: So I think this is the next
27 document.
28 MR. KAMMER: The next in order says 1999 Retail

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1 Leaders -- we're missing a bunch of numbers because
2 that's the one you took out premature.
3 MR. MCGUIRE: What we'll mark for identification
4 as 4067, entitled 1999 Retail Leaders Growth Fund
5 Changes.
6 (Exhibit 4067 was marked for identification).
7 BY MR. MCGUIRE:
8 Q. Are you familiar with this document?
9 A. Yes.
10 Q. What is it?

11 A. It was a modification made to the 1999 leaders
12 program by Philip Morris, where at certain levels there
13 was increased amount of funding available for buy-downs.
14 Q. Okay. 4068 for identification is Bates numbered
15 506 through 541.

16 (Exhibit 4068 was marked for identification).

17 MS. LONG: Excuse me. Is 4067 a Philip Morris
18 document?

19 MR. KAMMER: Yes.

20 MS. TUCKER: I'm sorry. I thought you were
21 going to ask another question about it. Then I'm losing
22 my numbers. 4067.

23 MR. KAMMER: 4067.

24 MS. TUCKER: Thank you. Should be marked
25 confidential as well as this exhibit. And I think 4068
26 probably -- is that the next one you were going to go to?

27 MR. MCGUIRE: Southland retailers.

28 MS. TUCKER: Right. Because it looks like the

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1 same type, I'm assuming it's also --

2 MR. MCGUIRE: 4068 is dated October 21, 1998.

3 So, you know, looks like every one of these documents has
4 already been marked confidential for whatever reason. So
5 if the documents themselves are already marked, it's the
6 testimony that I guess you want to make sure. And since
7 I'm going to be talking about documents, and to make life
8 easier for everybody, I will give you a continuing
9 objection or instruction that the transcript be prepared
10 as you want it, so long as these documents are
11 confidential.

12 MS. TUCKER: That's fine, except for some of the
13 documents are 7-Eleven documents. That's why I haven't
14 been indicating it for everything. So I know I was
15 trying to think of a way to make it easier.

16 MR. MCGUIRE: All right.

17 MR. KAMMER: If it's not too interruptive, I
18 asked her to use her voice as her documents come up
19 because when we get the transcript, I can search on her
20 name.

21 MR. MCGUIRE: I see.

22 MR. KAMMER: And I'm actually doing it for all
23 the documents.

24 THE REPORTER: Can we go off the record so I can
25 clarify something?

26 MR. MCGUIRE: Sure.

27 (Discussion off the record.)

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1 BY MR. MCGUIRE:

2 Q. Okay. What is 4068 for identification?

3 A. A business review from Philip Morris presented
4 to me.

5 Q. By whom?

6 A. Jamie French.

7 (Exhibit 4069 was marked for identification.)

8 BY MR. MCGUIRE:

9 Q. What's Exhibit 4069 for identification, which
10 I'll describe as being a letter to Philip Morris --
11 excuse me -- a letter apparently to Philip Morris.

12 A. I'm sorry. We're on a different one.

13 MR. KAMMER: Have you -- excuse me. Have you
14 skipped Bates 542? Yeah. Do you want to take this in
15 order?

16 MR. MCGUIRE: Sure. Sure. We'll make this
17 4069.
18 THE WITNESS: Actually, I think that's part of
19 the prior documents.

20 BY MR. MCGUIRE:

21 Q. Do you believe that this is part of a prior
22 exhibit that had to do with the Doral house brand
23 strategy?

24 A. Yes.

25 MR. KAMMER: Which was marked 4054 for
26 identification.

27 THE WITNESS: The first two pages are. And I
28 think the balance of them may be. Well, I'm sorry, it's

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1 a combination of part of that document and then some
2 material from R.J. Reynolds. First two pages definitely
3 go to that prior document. The third page is the number
4 of stores participating in the R.J.R. -- RDA agreement,
5 currently, that I prepared. 545 through 549 is material
6 that was presented at the same time the Camel
7 presentation was done in Winston-Salem that we reviewed
8 already.

9 BY MR. MCGUIRE:

10 Q. 547 to 549?

11 A. 545 to 549.

12 (Exhibit 4070 was marked for identification.)

13 BY MR. MCGUIRE:

14 Q. Okay. What's Exhibit 4070 for identification,
15 which is Bates 506 to 541? This is the one that I first
16 marked 4069 -- excuse me -- 4068.

17 A. 4068.

18 Q. Did we already do this one?

19 MR. KAMMER: Yes. That was the Philip Morris
20 Business Review dated 10-21-98.

21 MR. MCGUIRE: All right. What was it that I --

22 MR. KAMMER: You've already pulled --

23 MR. MCGUIRE: Okay. We've got 4069. Here we
24 are. 4070 is 550.

25 MR. KAMMER: And 551.

26 MR. MCGUIRE: Right.

27 BY MR. MCGUIRE:

28 Q. And what is that, sir?

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1 A. When we signed the retail leaders program back
2 effective July 1st of 1999, there were some
3 clarifications to the standard agreement that I wanted
4 Philip Morris to confirm.

5 MR. MCGUIRE: And let's go to 4071. Bates 552
6 to 587.

7 (Exhibit 4071 was marked for identification.)

8 THE WITNESS: This was an information package
9 that was sent out for distribution to -- I believe this
10 is the franchise version -- yes -- to all our franchisees
11 explaining the three new recommended RDA programs with
12 Philip Morris, Reynolds, and Brown & Williamson. And
13 asking them to provide us with confirmation that they
14 were going to participate in them. In asking them to
15 review, make a decision whether to participate or not,
16 and if so, to sign the participation forms.

17 BY MR. MCGUIRE:

18 Q. Who prepared this package?

19 A. Most of this is my work. The participation
20 forms would have been done by our legal department.

21 Q. Some handwritten notes on page 567 that I cannot
22 read. Can you read them or can you tell, at least,
23 whether that's your handwriting or printing? It's a more
24 legible note on 568, the next page over.

25 A. It --

26 Q. Try the next page. You can see "product
27 availability."

28 MS. LONG: What page are you on?

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1 MR. MCGUIRE: 568.

2 MR. KAMMER: 568.

3 THE WITNESS: I believe I sent this to a
4 franchisee who had some questions about what his
5 obligations were with the Brown & Williamson program,
6 regarding if he had to participate in promotions, if he
7 had to have certain space, and if he had to have certain
8 products available. And I believe I sent them to them,
9 probably with a note saying, "See the items I marked for
10 clarification." If you look at the first page of the
11 document, you can see a handwritten note where this
12 indicates to me this is a copy of something I used to
13 send to a franchisee to -- based on his request for
14 information.

15 BY MR. MCGUIRE:

16 Q. So the writing on 467 and 468, is this
17 franchisees -- as well as 469?

18 A. No. These were my kind of pointing out to him.
19 These are the areas he was asking for information on,
20 specifically.

21 Q. I can't read them, but I'm assuming we're going
22 to get a more legible copy eventually. And your printing
23 looks like it's readable so far. If you go to 4 --
24 excuse me -- 572, there is a handwritten note on the
25 margin on the left side. Is that in your --

26 A. Yes, it is.

27 Q. -- printing?

28 A. Yeah.

192

1 Q. Do you know what that says?

2 A. Yeah. "To be used without center panel."

3 Q. And why was that?

4 A. Because of the height. This was when we first
5 went into the program, we were still installing back
6 bars. So in many stores we did not have the back bars
7 yet. We agreed to use counter displays until the back
8 bars were completed. But I did not agree to use this
9 display unless they reduced the height of it, and they
10 could do that by taking out the center section.

11 Q. In the photograph of the display itself, or in
12 the image of the display itself, first it says "New Kool
13 Natural." What's natural about this, if you know?

14 A. That's their brand. It's called Kool Natural.
15 I believe they use natural menthol is what it is.

16 Q. And this Carlton 1 mg, what does that stand for?

17 MS. LONG: Objection; calls for speculation.

18 THE WITNESS: I think it's got something to do
19 with nicotine or something.

20 THE REPORTER: I'm sorry?

21 THE WITNESS: I think it has to do with
22 something with tar or nicotine content.

23 BY MR. MCGUIRE:

24 Q. And can you read on your copy the handwritten
25 notes on 573?

26 A. Yes. These were sku's, s-k-u apostrophe "s."
27 Q. If you can't, that's okay. I just want to know
28 if you could.

193

1 A. That was part of the original recommended
2 product assortment. I'm sorry, I would not be able to
3 completely --

4 (Exhibit 4072 was marked for identification.)

5 BY MR. MCGUIRE:

6 Q. Okay. 4072 for identification is a document
7 Bates 588 through 614 to Jamie French from you. Is that
8 your signature?

9 A. Yes, sir.

10 Q. Document's dated August 18, 1999. What does it
11 generally relate to?

12 A. It's -- dis-- any time you have Philip Morris,
13 do any kind of fixture installation in your store, or
14 like, for example, repair an overhead pack merchandise,
15 or anything like that, they require you to sign this
16 document.

17 And I ran this by my legal department. And
18 basically they drafted this response, that the two
19 purposes of the agreement is to protect Philip Morris
20 against liability in connection with the installation of
21 cigarette displays performed by parties other than Philip
22 Morris contractors.

23 So if we at any point were using any kind of
24 fixturing, and like I said, in some stores we had, was
25 holding them harmless if they didn't do the installation
26 themselves.

27 Q. Philip Morris required you to sign this
28 agreement even though you thought it was confusing and

194

1 inapplicable?

2 A. Yes.

3 (Exhibit 4073 was marked for identification.)

4 BY MR. MCGUIRE:

5 Q. Let's go to 4073, which is on Philip Morris
6 letterhead. It is dated October 1998. And would you
7 advise us or inform us as to what this is.

8 A. Yes. These are the provisions under which
9 Philip Morris will provide funding, some funding for
10 fixtures installed by the retailer of their choice, and
11 at their expense.

12 Q. Is this included with any of the other prior
13 agreements we've already marked?

14 A. I do not believe so, no.

15 MS. TUCKER: I will request that any testimony
16 about this document be marked confidential.

17 (Exhibit 4074 was marked for identification.)

18 BY MR. MCGUIRE:

19 Q. Let's go to 4074 for identification, which is
20 630 through 635. Who prepared this?

21 A. I did.

22 Q. What was the source of your information?

23 A. This is kind of a matrix outlining the various
24 cigarette RDA programs that were available. Both the
25 current one that was in effect, and ones that had been
26 proposed. The differences in and my recommendations to
27 the company as to which ones we should go to.

28 Q. And the documents that are attached to this

195

1 first matrix?

2 A. I'm sorry. I did not prepare those, no. That
3 is from Philip Morris.

4 Q. This is dated January 14, 1999; is that right,
5 upper first page?

6 A. Yes.

7 Q. Upper left-hand corner?

8 A. Yes.

9 Q. And how does this other information that is
10 attached to the first document relate to the matrix
11 itself, if it does?

12 A. It relates to it in the fact that up until that
13 time we had not received an official notification from
14 Philip Morris that the current agreement we were under
15 was going to expire on a particular date.

16 Q. So was this meant to -- meant to reflect the
17 prearrangement, as opposed to the proposed 1999
18 arrangement, which you've summarized on the first page?

19 A. This was to represent where we were, what was on
20 the table, and the fact that a decision needed to be made
21 because our current agreement was going to expire.

22 Q. When was the agreement going to expire?

23 A. March 31st, 1999.

24 Q. Okay. And the handwritten notes that are on the
25 first page, are they yours?

26 A. Yes.

27 Q. Rather than struggling through this, and on
28 reliance that we'll get a cleaner copy, and that we'll

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1 pass on any further dwelling. The next two pages are not
2 table -- together, but they seem to be similar, so I'm
3 going to mark them as one. Exhibit 636 and 637 will be
4 marked for identification as 4075.

5 (Exhibit 4075 was marked for identification).

6 BY MR. MCGUIRE:

7 Q. And if you tell me what kind of documents these
8 are, or can you identify them?

9 A. Yes. These are -- these documents were provided
10 to tell us what franchisees will be paid from Philip
11 Morris, if they elected not to go with our recommendation
12 for category level, which is 1. If the franchisees opted
13 for Level 2, they would be paid \$318. If they opted for
14 Level 3, they would be paid \$377. So if, in fact,
15 franchisees did opt for that, we would have a record on
16 file.

17 MS. LONG: This is a Philip Morris document?

18 THE WITNESS: Yes, these are Philip Morris
19 documents.

20 MS. LONG: Any testimony related to these
21 documents should be marked confidential.

22 (Recess taken.)

23 (Exhibit 4076 was marked for identification.)

24 BY MR. MCGUIRE:

25 Q. Mr. Bonfiglio, what is Exhibit 4076 for
26 identification, which is dated May 15, 2000?

27 A. It's a copy of the letter we reviewed before
28 that was signed by Gary Rose, asking that the letter

201

1 itself be distributed to our franchisees and to our store
2 managers about the new agreement.

3 Q. As well as a copy of the new agreement?

4 A. As well as a copy of the new agreement, yeah.

5 Q. Okay. I'm going to go out of order here.

6 MR. KAMMER: No problem. You mean page order?

7 MR. MCGUIRE: Yeah. 753.
8 MR. KAMMER: Is this going to be Exhibit 4077?
9 (Exhibit 4077 was marked for identification.)

10 BY MR. MCGUIRE:

11 Q. What is Exhibit 4077? It looks like a
12 daily/weekly planner. But whose is it and whose
13 handwriting is it?

14 MR. KAMMER: How big is this exhibit?

15 MR. MCGUIRE: One page.

16 MR. KAMMER: 753?

17 MR. MCGUIRE: Yes.

18 THE WITNESS: Well, I'm not sure whose daily
19 planner it's from. This goes back to when there was an
20 increase in excise tax on cigars in California 7-1 of
21 last year, I believe. And we were trying to determine
22 whether or not we were obligated to pay the tax on floor
23 stock. And I think the whole -- my wholesaler, McLanes,
24 finally came back and said they had researched it and
25 there was no floor stock inventory that had to be taken
26 or taxed.

27 (Exhibit 4078 was marked for identification)

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202

1 BY MR. MCGUIRE:

2 Q. 755 through 759 is dated 6-11-99. It's on
3 McLane Southern California fax cover sheet.

4 Can you tell me what that document is.

5 A. That's related to the prior one. And this was
6 providing me with the new costs. Additional tax added to
7 them would be so that we could update our database.

8 MR. MCGUIRE: Okay. That was Exhibit 4078, if I
9 didn't designate it on the record. 4079 on the record is
10 Date numbers 760 through 772 on McLane Pacific Grocery
11 Distribution letterhead.

12 (Exhibit 4079 was marked for identification).

13 BY MR. MCGUIRE:

14 Q. Can you tell me what this document is.

15 A. I think it's -- it's the same information from
16 McLane Pacific that was on the prior sheet, which was
17 from McLane Southwest. We have two McLane centers
18 servicing California stores. So they each provided me a
19 listing of the new tobacco products with the higher taxes
20 included on them.

21 Q. I see cigars. Are cigarettes any part of this
22 document?

23 A. That tax at that time was only an increase on
24 other -- what's called other tobacco products, smokeless
25 cigars, et cetera.

26 Q. Do you have Prince Albert in a can? That was a
27 joke.

28 A. Let him out.

203

1 Q. You guys are too young because that's an old --
2 that was an old joke. Okay. While we're running into
3 things that really don't make a hill of beans to me,
4 what's 773 through 774, is that the same subject matter?

5 A. Yes.

6 Q. We're not even going to mark that. 775 through
7 776?

8 MS. LONG: Hold on a second.

9 MR. KAMMER: Yeah, I can help you, but only so
10 far. Don't do that to me.

11 BY MR. MCGUIRE:

12 Q. Hold on a second. I'm going a different way
13 now. Does 775 to 778 relate to the same subject matter?
14 A. Yes, it does.

15 Q. What about 779 through 787?

16 A. No. It's a different matter. Not 100 percent
17 sure exactly what it's about.

18 MR. MCGUIRE: Okay. Let's mark that as Exhibit
19 4080.

20 (Exhibit 4080 was marked for identification.)

21 MR. KAMMER: 4080.

22 BY MR. MCGUIRE:

23 Q. For identification. It's on the letterhead of
24 the Franchise Tax Board State of California. And it is
25 dated sometime in 1998. Has a response date of May
26 15th -- I can't readily find a date on it. Do you know
27 what the subject matter of this document, as well as the
28 documents attached to it?

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1 A. I was told by -- and I believe it was from our
2 legal department that the Franchise Tax Board in the
3 State of California wanted information regarding an
4 inventory management process that we put in place called
5 AIM. It stood for advanced inventory management.

6 And there was an incentive program for
7 franchisees to follow this at that time. I don't know
8 why the Franchise Tax Board was interested in this
9 information. They picked this information up out of one
10 of our annual reports and asked us to describe -- to
11 provide some information about it, which, I believe, I
12 did verbally to one of our attorneys. And that's about
13 all I know at this point in time on this.

14 (Whereupon, this ends the testimony deemed
15 confidential and subject to protective order entered by
16 the Superior Court of the County of Los Angeles, State of
17 California.)

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1 (Whereupon, the following testimony is deemed
2 confidential material and subject to protective order
3 entered by the Superior Court of the County of Los
4 Angeles, State of California and is bound separately.)

5 BY MR. MCGUIRE:

6 Q. 794 through 815. What is that document?

7 A. This -- this is the corporate store version of
8 the information package that was sent out when we entered
9 into our three new RDA programs last July with the three
10 companies. Difference being that we don't have
11 participation forms required, et cetera. So it's pretty
12 much the same information, somewhat condensed because of
13 not needing to provide the same kind of material to
14 corporate stores.

15 Q. Am I correct that this describes your RDA
16 program for your corporate stores throughout the country?

17 A. That's correct.
18 MR. MCGUIRE: We'll make this Exhibit 4081,
19 thank you.
20 (Exhibit 4081 was marked for identification).
21 MS. TUCKER: And you said only through page 815
22 or 8 --
23 MR. MCGUIRE: I'm sorry. 794 through --
24 Witness, can you help us?
25 THE WITNESS: 815, but it appears that there may
26 be some pages missing.
27 MS. TUCKER: Well, I don't know if some of the
28 subsequent pages maybe should have been attached to it.

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1 THE WITNESS: It appears to be.
2 MR. MCGUIRE: If the question from counsel is,
3 should 816 and 817 or 818.
4 MR. KAMMER: If these had been stapled badly,
5 you can start probably tearing them apart without hurting
6 Mr. McGuire's feelings.
7 MR. MCGUIRE: Yeah. They seem to be similar.
8 And counsel makes a good point if this is supposed to be
9 an all-inclusive package.
10 THE WITNESS: I believe this is an all-inclusive
11 package, sir, yes.
12 BY MR. MCGUIRE:
13 Q. Right through page 18 and nothing else needs to
14 be added?
15 A. No, no, no, no. 815 is not complete.
16 Q. All right. Then let's make the exhibit a
17 complete corporate package describing the RDA program
18 with all cigarette manufacturers for all corporate stores
19 in the United States.
20 A. Except for this doesn't belong in there. 843,
21 844, 845, these are copies again of franchise
22 participation form which would not have been in there.
23 Pages 831 through 842, once again, I think are just
24 duplicates of what was in the franchise agreements that
25 we already looked at. This would be, I believe, a
26 complete -- I believe this would be a complete package.
27 There's some duplicate pages here.
28 Q. You should --

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1 A. I believe this would be a complete package, sir.
2 Q. So that we're complete or final on this, would
3 you or you, Bill -- I don't care who does it. Somebody
4 read into the record what are the Date numbers for 4081,
5 which is described by the witness as being a complete RDA
6 package with all cigarette manufacturers for the
7 corporate stores in the United States. Did I describe
8 that right?
9 A. Well, no.
10 Q. Would you describe what this is.
11 A. With the exception of the Philip Morris one,
12 which was changed, which is changing July 1st, which
13 we've already reviewed, the new leaders program. The
14 Brown & Williamson and R.J. Reynolds program is in here.
15 MR. KAMMER: Those were the programs as of July
16 1st, '99?
17 THE WITNESS: Yeah. Being changed basically
18 just with the Philip Morris change.
19 BY MR. MCGUIRE:
20 Q. And these run through July 2001?
21 A. No. December -- end of December 2001.

22 Q. Thank you.
23 MR. KAMMER: And the Exhibit 4081 presently
24 consists of Bates numbers 795 -- excuse me -- 794 through
25 830, consecutively.
26 BY MR. MCGUIRE:
27 Q. Is 831 through 845 duplicates of information
28 that has already been marked as exhibits in our

211

1 discussions?

2 A. No.

3 Q. Okay. What is 831 through 842?

4 A. This was -- part of this is. I'm sorry. Looks
5 like I used the same information in two different
6 communications. This was basically a communication to my
7 division merchandisers regarding new display fixturing
8 that would be occurring mostly as a result of the new
9 display agreements. And talks about the back --
10 basically, about the back bar fixturing program.

11 Q. What is 843 through 845? Is that a duplication?

12 A. That's a duplication of the participation forms
13 that were in the other package.

14 Q. Okay. Going back to some other documents we
15 didn't get to yet because I was getting -- looks like
16 we're going to make the plane now. 651. What is that
17 document?

18 A. This is part of I think the thing we just looked
19 at.

20 Q. Is the first page the same? Looks like an
21 outline of everything we talked about?

22 A. Yeah.

23 Q. And then the second page looks like it's cut off
24 and it's only --

25 A. Yeah.

26 Q. -- part of. So do you know if this should have
27 gone with an exhibit that would have been ending with
28 649?

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1 MR. KAMMER: Exhibit 4076? Is that what you're
2 saying?

3 BY MR. MCGUIRE:

4 Q. Let's see. 4076 has 649 as the last page. This
5 document, no matter what we do with it, Bill, is -- just
6 doesn't make any sense because it's -- it ends without a
7 period. It's a partial page.

8 Can you help us, sir? Do you know what the
9 purpose of this document or what it relates to?

10 A. Yes. And I cannot tell you exactly which one of
11 these documents. It gave my division merchandisers once
12 again some of the rationale for the programs that we had
13 come up with as recommended why we weren't participating
14 in a higher level of retail leaders, for example. And
15 I'm not sure that -- because I pulled everything out of
16 my files, I'm not sure that the balance of this document
17 even exists anymore. But the program execution
18 refixturing information, question, answer, action
19 required, are all in prior documents. The only thing
20 that seems to be is a little bit of the rationale that
21 was added.

22 Q. 653 is a one-page document that apparently was
23 part of another document which -- can you identify this?

24 A. Yes. This is -- I believe this is from
25 information that is sent to me from R.J. Reynolds'
26 government affairs department. They do a monthly recap,

27 if you will, of legislative action or proposed
28 legislation around the country. The reason is that it's
213

1 broken up when I get it.

2 If there is more than one state on the page, I
3 make a copy. So I have a page for California if there's
4 something for California; one for Louisiana, if there's
5 something on there for Louisiana. And I kind of review
6 these -- look for possible federal excise tax increases
7 that we need to be aware may be happening, or some kind
8 of new restrictions on counter displays, et cetera, we
9 need to be aware of.

10 Q. The top of the page talks about the business and
11 taxpayers for fair fees coalition. Is that a group
12 sponsored by the tobacco industry?

13 A. I have no idea what this one means. It's just,
14 basically, California stuck in the file, to be honest
15 with you. I think -- I mean, I guess I could tell you
16 what I think it means, if that's okay.

17 Q. Sure.

18 A. I believe there was -- I believe there was a
19 move by the voters -- some voters in California to repeal
20 some of the increases on the cigarette and tobacco taxes.
21 I believe that's what this was.

22 Q. And next group down, it talks about smoking
23 restrictions, marketing, sales, and advertising
24 restrictions, New York and California. What California
25 restrictions are referred to there, if you know?

26 A. I don't know because they're not here. They're
27 just saying that this is probably something that will be
28 on the agenda for legislatures in May of those dates.

214

1 Q. And this document, when it was given to you in
2 total, what was it called, if you know?

3 A. No, I don't know. It also, I believe, has been
4 sent to me as confidential.

5 (Exhibit 4082 was marked for identification.)

6 BY MR. MCGUIRE:

7 Q. Mark this as Exhibit 4082. You say marked
8 confidential from whom?

9 A. I believe from the Reynolds people. Not for
10 distribution only to the parties that it's sent to.

11 Q. And the people that it's carbon copied to, do
12 you recognize them as being employees of a tobacco
13 manufacturer?

14 A. The only one I really recognize down here, I
15 think, is Darryl Marsch. I believe he is with Reynolds.

16 Q. What about Byron Nelson WKA? Do you recognize
17 that?

18 A. No, I don't. Byron Nelson, no, I don't.

19 Q. All right. Next are a series of -- well, I
20 don't know if I can go into a series yet. Let's mark as
21 one exhibit two, 654 and 655, 671 through 674. What's
22 our next number there?

23 (Exhibit 4083 was marked for identification).

24 MR. KAMMER: 4083.

25 MR. MCGUIRE: Thank you. 4083 for
26 identification.

27 BY MR. MCGUIRE:

28 Q. What are these documents?

215

1 A. 654 and 655?

2 Q. Yes.

3 A. 654 and 655 is a response to me from John Grover
4 of Brown & Williamson to my request to ensure that if we
5 had any stores that still had counter displays in Los
6 Angeles, that they were converted to nonself-serve
7 displays by, and I forgot what the date was, I believe
8 June 2nd.

9 City of L.A. required or banned all self-service
10 cigarette displays. And most of our stores don't have
11 them. They were in back bars, but we have some stores
12 with physical constraints against back bars. And I
13 wanted to ensure that if we did have counter displays,
14 they were all nonself-serve types. So I notified all
15 three of my national contacts to make sure they followed
16 through, to make sure that was, in fact, done in case.

17 Q. And 671 through 673, does it have to do with the
18 smoking paraphernalia in California?

19 A. Yes.

20 Q. And are the addressees in this -- these are
21 e-mail printouts; is that right?

22 A. That's correct.

23 Q. Are the addressees in this series of documents,
24 671 through 674, all 7-Eleven employees?

25 A. Yes, they are.

26 (Exhibit 4084 was marked for identification.)

27 BY MR. MCGUIRE:

28 Q. Okay. Exhibit 4084 for identification is Bates

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1 Numbers 656 through 665. And it's from Ronnie Volkening,
2 V-o-l-k-e-n-i-n-g, to Todd McElroy, M-c capital
3 E-l-r-o-y. And you are also a recipient. It's dated
4 January 29, '99. And the subject has to do with taxes on
5 tobacco buy-downs; is that right?

6 A. Yes.

7 Q. How was this resolved, if you know?

8 A. I'm not sure it is resolved.

9 Q. Okay. So it's still -- is it still an issue, as
10 to whether or not the retailer has to pay a tax on the
11 buy-downs?

12 A. Yes, my understanding is still an open issue.

13 Q. Has Southland taken a position on that?

14 A. Yes. I think our position was stated in here.

15 Q. Was that your attorney that appeared as stating
16 the position that there should be no tax?

17 A. If you're referring to Tom McElroy, I'm not sure
18 who *purchased.

19 Q. Mr. Kenney?

20 A. Gosh, I don't know who Mr. Kenney is, no.

21 Q. Did you receive any advice on this from
22 Covington and Burling? By "you," I mean the company.

23 A. I don't know.

24 Q. By "this," I meant the issue, not just this
25 appearance.

26 A. I'm sorry. Who's Covington and Burling?

27 Q. Does that not ring a bell with you?

28 A. No.

217

1 Q. Okay. They're attorneys.

2 A. Huh?

3 Q. They're attorneys.

4 A. Okay.

5 (Exhibit 4085 was marked for identification.)

6 BY MR. MCGUIRE:

7 Q. Next 667 through 670 that we marked for

8 identification as Exhibit 4085. What's the source of
9 this document?
10 A. I'm not 100 percent sure in this. I think I
11 know, but I'm not sure.
12 Q. You don't have to be 100 percent sure. Can you
13 tell me probably who it is?
14 A. I believe this was our fellow who was running
15 our head of our tax department thing, Mr. Todd McElroy.
16 I believe this was his -- for lack of a better word, his
17 position statement on it.
18 Q. It's on the same subject as the previous
19 exhibit?
20 A. Yes, it is.
21 Q. Let's go to 4075, a single-page exhibit Activity
22 Report.
23 MR. KAMMER: 675. 4086, right.
24 (Exhibit 4086 was marked for identification.)
25 BY MR. MCGUIRE:
26 Q. 4086 for identification, it doesn't have a date
27 on it. Do you know what this document is?
28 A. Yes.

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1 Q. What is it?
2 A. This is, I guess, for lack of a better word, an
3 obstacle that was brought to our attention. And that we
4 had purchased equipment for all the stores in California
5 to be able to scan driver's license bar codes, in order
6 to assist in identifying the fact that persons buying
7 cigarettes were of age. And apparently the new driver's
8 license does not carry that same bar code anymore. So we
9 look at it as a step backwards.
10 Q. Was the idea being that you would also scan
11 everybody driver's license that bought cigarettes so that
12 the tax authority would know how much -- how many
13 cigarettes were being bought, or was it limited only to
14 minors that were going to be scanned?
15 A. Well, I think we were going to -- I mean, our
16 directions to the stores were -- are basically to -- if
17 you -- if you think -- if they appear to be less than 25
18 or 26, I believe is the -- I believe is the age that was
19 said. If it looked to be 26, make sure you ask for
20 identification. And then in California, since we could
21 scan that, it helps the person do the math in their
22 minds. They don't have to figure out how old they are,
23 you know, the birth date says this much, take away this
24 much. Because for some of our people that gets to be a
25 challenge.
26 Q. Who is R.L. Mozingo, M-o-z-i-n-g-o?
27 A. I don't know.
28 MS. LONG: Are we on a different exhibit now?

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1 MR. KAMMER: Next page.
2 MR. MCGUIRE: The next Exhibit 4087 for
3 identification will be a combination of Bates 676, 677,
4 678 through 683 and 690 through 691. They're all from
5 Mr. R.L. Mozingo, and they all go to T.J. Payne,
6 P-a-y-n-e.
7 (Exhibit 4087 was marked for identification).
8 BY MR. MCGUIRE:
9 Q. Who is Mr. Payne?
10 A. I don't know.
11 Q. Where did this information come from?
12 A. This comes to me from Jean I. Swisher, from R.J.

13 Reynolds.

14 Q. So is it your understanding that these two
15 individuals probably work for R.J. Reynolds?

16 A. I would -- that's probably a good assumption.
17 Yeah, I'm not sure but --

18 Q. Okay. And why did Ms. Swisher -- it is Ms.
19 Swisher, right?

20 A. Mrs.

21 Q. Mrs. Swisher?

22 A. Yeah.

23 Q. Not Mr. Swisher?

24 A. No.

25 Q. Where did they receive this information, if you
26 know?

27 A. Where did Mrs. Swisher get it?

28 Q. Yes.

220

1 A. I believe she gets it from within their company,
2 from their government affairs department, I believe.

3 Q. And is the subject matter of this all
4 legislative regulations on the sale of cigarettes?

5 A. Yes.

6 Q. Or cigarette materials?

7 A. Yes.

8 Q. What's the purpose of them sending this to you,
9 if you know?

10 A. Information sharing, and also, you know, so that
11 we can be aware of possible pending new legislation that
12 requires our action in order to be in compliance.

13 (Whereupon, this ends the testimony deemed
14 confidential and subject to protective order entered by
15 the Superior Court of the County of Los Angeles, State of
16 California.)

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1 (Whereupon, the following testimony is deemed
2 confidential material and subject to protective order
3 entered by the Superior Court of the County of Los
4 Angeles, State of California and is bound separately.)
5 BY MR. MCGUIRE:

6 Q. Take a look through that and tell me if these
7 documents, e-mails, cover sheets, all have to do with
8 restrictions on the sale of cigarettes in various
9 jurisdictions.

10 A. No. The last one, 743 through 754, once again,
11 go back to the tax issue again of July 1st, the
12 California increase on other tobacco products.

13 Q. Okay. Other than that, this still stay as part
14 of this exhibit?

15 A. Yes, they do deal with either smoking
16 restrictions or -- I'm sorry. What did you call them?

17 Q. I said regulations or restrictions on the sale

18 of cigarettes.

19 A. As well as smoking restrictions in general,
20 which are just on the same document.

21 Q. Where did you get these documents from?

22 A. They come from a variety of sources. Some come
23 from R.J. Reynolds, some come from Philip Morris, some
24 come from McLanes Wholesale, and some come from our
25 government affairs department.

26 Q. Do you get these in the normal course of
27 business?

28 A. I would assume I get a fair amount of them. I'm
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1 not sure I get them all. I probably combined -- I have,
2 probably -- considering I get them from cigarette
3 companies, I probably get more than anybody else.

4 Q. Do you read them?

5 A. I look at the ones -- I scan them and look at
6 the ones that are -- you know, apply. Like smoking
7 restrictions, quite frankly, I really don't pay much
8 attention to those. I'm more interested in something
9 that might require us to take some action in terms of how
10 we display merchandise, et cetera.

11 Q. Well, do you consider the statements made in
12 these various ordinances and laws, with respect to the
13 manner and method in which 7-Eleven, Incorporated,
14 markets cigarette products?

15 A. Could you repeat that? Do I do what?

16 Q. Do you consider the statements made in these
17 documents in determining the manner and method in which
18 7-Eleven, Incorporated, will market and sell cigarette
19 products?

20 A. Well, certainly, if any of these regulations are
21 going to enforce, of course we do, yes.

22 Q. For example, I'm now looking at page 697, where
23 it says the Supreme Court -- and this is a California
24 ordinance. "Supreme Court has repeatedly recognized that
25 children and minors deserve special solicitude because
they lack the ability to assess and fully analyze the
information presented through commercial advertising."
28 How do you take that into consideration when you market

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1 cigarettes?

2 A. Well, no. My note on here says pages 3 and 5
3 for the key parts and the restrictions, that these are
4 the requirements I'm following -- I'm following the
5 requirements that are imposed.

6 Q. Okay. Is that how you take into effect the
7 facts that are stated in the preamble or purpose of the
8 -- of this particular statute or ordinance?

9 MS. TUCKER: Objection; lacks foundation.

10 BY MR. MCGUIRE:

11 Q. Go ahead.

12 A. The prohibition is a result of the preamble. So
13 I'm following the prohibition.

14 Q. Does the company agree with that statement that
15 the Supreme Court has made?

16 A. I don't know. Do I agree with that?

17 Q. No. The company.

18 A. The company. I couldn't say.

19 Q. Who would I ask in the -- who would know whether
20 the company agrees or not?

21 A. I couldn't tell you that.

22 Q. Do you know if you have any stores within 1,000

23 feet of any residential zone, residential use, school,
24 religious institution, entertainment park, youth center,
25 or public park playground in the state of California?

26 A. I assume we do, yes.

27 Q. In those places, have you advised both the
28 franchisees and the corporation that they're not allowed

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1 to have a sign that advertises tobacco products that can
2 be seen from the outside?

3 MR. KAMMER: Objection; assumes facts not in
4 evidence. This is not a statewide regulation.

5 BY MR. MCGUIRE:

6 Q. Let me limit the question to the city of Los
7 Angeles.

8 A. I did -- I did provide the notification to our
9 division, yes, that these are regulations we need to
10 follow.

11 Q. Do you know if you've complied with them yet?

12 A. Personally?

13 Q. Yeah.

14 A. Knowledge? No. I have no personal knowledge of
15 it.

16 Q. Who would know whether the corporation has
17 complied with the law yet in the corporation?

18 A. Once again, my -- probably my first place to go
19 would be to the division manager.

20 Q. That's the lady that's been in the job for two
21 weeks?

22 A. Yeah. Or the market managers.

23 Q. Wouldn't your superior know, since he was in the
24 job up until two weeks ago? He had the Southern
25 California marketing managership before -- up to two
26 weeks ago; isn't that right? Jeff?

27 A. Jeff Hamill.

28 Q. What was it?

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1 A. Would we have personal knowledge of each and
2 every store complied?

3 Q. Yeah.

4 A. I'm not sure.

5 Q. What is the corporation doing to see or to
6 determine whether or not it is in compliance, if
7 anything?

8 A. I don't know.

9 Q. Let me read to you from page 707. Does the
10 company agree that the tobacco industry affectively
11 targets children and youth to start to smoke through
12 advertising and marketing of promotional items?

13 A. No.

14 Q. What do you base that denial on?

15 A. Once again, are you asking me as a
16 representative of the company?

17 Q. Yes, sir.

18 A. I see no evidence thereof.

19 Q. What evidence have you looked at?

20 A. Point of purchase, advertising.

21 Q. Anything else?

22 A. No.

23 Q. Does the company agree that every day in the
24 United States 3,000 children become smokers, including
25 300 children and youth in California?

26 A. I don't know that.

27 Q. Do you have any information that would indicate

28 that that's a false statement?

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1 A. No.

2 Q. Do you agree that the surgeon general and the
3 California Department of Health Services have found that,
4 although illegally, children can easily buy cigarettes
5 and other tobacco products over the counter through
6 self-service displays and vending machines?

7 A. No.

8 Q. Is this one of the reasons why you have
9 eliminated self-service displays in your stores, or
10 you're in the process of doing that?

11 A. No.

12 MS. LONG: Object.

13 BY MR. MCGUIRE:

14 Q. 716, I know I saw that name before. Byron
15 Nelson, WKA, Winston-Salem. Does that indicate to you
16 that he's an employee of R.J. Reynolds tobacco?

17 A. Sure appears to be. Yes, sir.

18 Q. 717, an ordinance in the town or municipality of
19 Walnut Creek says -- or states that no manufacturer,
20 distributor or retailer of tobacco products may -- and it
21 goes on. First question I have is, are -- is 7-Eleven,
22 Incorporated, a manufacturer, distributor, or retailer of
23 tobacco products?

24 A. Yes.

25 Q. Okay. It says that you shall not "sell or cause
26 to be marketed, licensed, distributed or sold any item or
27 service to a minor which bears the brand name, logo,
28 symbol, motto, selling message, recognizable color or

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1 pattern of colors, or any other indicia, or product
2 identification identical with or similar to or
3 identifiable with those used for any brand of tobacco
4 product." What are you doing to make sure that that
5 doesn't happen --

6 MR. KAMMER: I'm going to object to the
7 following.

8 MR. MCGUIRE: -- if anything?

9 MR. KAMMER: Objection; it assumes --
10 foundation. It assumes the company has a store in Walnut
11 Creek.

12 THE WITNESS: We do not have any such items
13 listed as available.

14 BY MR. MCGUIRE:

15 Q. The 1-800 Marlboro signs, wouldn't they qualify?

16 A. I don't think so. I don't know.

17 Q. Can you get logo items, Marlboro cigarettes by
18 calling 1800 Marlboro?

19 MS. LONG: Objection; calls for speculation.

20 THE WITNESS: I don't know.

21 BY MR. MCGUIRE:

22 Q. Is this article identical to the requirements of
23 the Master Settlement Agreement?

24 A. I don't know.

25 Q. Have you ever seen the Master Settlement
26 Agreement?

27 A. I believe I've seen it. Yes, sir.

28 Q. Have you ever seen what portion, or has someone

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1 told you what portions they believe apply to 7-Eleven, if
2 any?

3 A. There's been some conversation that you cannot

4 have a -- a value-added purchase with a brand name of a
5 cigarette on it, like a cap or T-shirt.
6 Q. Do you get, or do you obtain, 7-Eleven obtain, a
7 special license to sell cigarettes?
8 A. I don't know.
9 Q. Is there a tobacco retailer's license in the
10 state of California?
11 A. I don't know.
12 Q. Who in the company would know, and would know
13 whether you have one or not?
14 A. Either our legal department, or probably our --
15 legal department, I guess, would be a good start.
16 Q. Do you have a store in Walnut Creek?
17 A. I believe we do.
18 Q. Do you know if that store has a retail
19 license --
20 A. I do not.
21 Q. -- retail license to sell tobacco products?
22 A. I do not, no.
23 Q. If the store in Walnut Creek does not have a
24 license to sell tobacco products, and they sell tobacco
25 products, would that be an unlawful act in your mind?
26 MS. LONG: Objection; calls for a legal
27 conclusion.
28 THE WITNESS: I'm sorry. Does this call for

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1 them to have a license? Is that what this is?

2 MR. MCGUIRE: Yes.
3 MS. TUCKER: Also lacks foundation.
4 THE WITNESS: If a store is supposed to have a
5 license to sell tobacco, and they don't have a license to
6 sell tobacco, I would consider that an unlawful act,
7 yeah.

8 BY MR. MCGUIRE:

9 Q. Do you know where the city of Lawndale is?
10 A. No, I don't.
11 Q. Does the company -- I'm now reading from page
12 731. I won't read it into record, but would you go to
13 that page?
14 MR. KAMMER: What's the page?
15 MR. MCGUIRE: 731.

16 BY MR. MCGUIRE:

17 Q. And I cannot read the document or the
18 handwriting on the document, as I indicated earlier in
19 several other ones, but I do think I see your Tom B in
20 the upper right-hand corner. Would you confirm that
21 that's what --

22 A. Yes, sir.
23 Q. Does that indicate that you've read this
24 ordinance?

25 A. Yes.
26 Q. Did you understand it or did you have to get --
27 did you understand the ordinance when you read it, or
believe you understood it?

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1 A. Yes.
2 Q. Have you done anything with respect to the
3 stores that are in Scotts Valley to comply with this
4 ordinance?
5 A. Scotts Valley? Where is Scotts Valley?
6 MR. KAMMER: I think we're mixing up two
7 documents, but I'll let you ask the question. The cover
8 memo is one city and the document beginning at 731 is

9 Scotts Valley.
10 MR. MCGUIRE: What cover memo?
11 MR. KAMMER: You started with reference to the
12 city of Lawndale, and there's a preceding page. I don't
13 think they're the same. I don't know where either one of
14 them is.
15 BY MR. MCGUIRE:
16 Q. The ordinance has to do with Scotts Valley, and
17 that's the one you signed, right?
18 A. Yes. Well, no. Both.
19 Q. You signed them both? Where did you receive
20 this particular ordinance from?
21 A. The one from city of Lawndale?
22 Q. Yes. I'm sorry, no. The Scotts Valley one.
23 A. I'm not sure where this one came from.
24 Q. Does your handwriting indicate that Scotts
25 Valley is in California?
26 A. Yes.
27 Q. And did you read the entire ordinance?
28 A. I generally look for restrictions and action

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1 that we need to take.
2 Q. Do you generally skip over the other information
3 that's stated in the ordinance?
4 A. I look for what it is that we need to do to be
5 in compliance.
6 Q. Do you know if any of the information on page 2
7 of this ordinance is accurate?
8 A. No, I don't.
9 Q. Have you requested any information from the
10 tobacco industry as to whether or not the information is
11 accurate?
12 A. I'm sorry.
13 Q. Information such as the industry spent 5.1
14 billion on advertising in 1996?
15 A. No.
16 Q. In California alone the tobacco industry spent
17 1.3 million in advertising and promotion per day in 1995
18 and approximately 32.7 million on billboard advertising
19 in 1996. Do you have any reason to believe that that
20 information is incorrect?
21 A. No.
22 Q. Then there's a number of attributions to
23 different tobacco companies from documents they're
24 quoting from these documents. Do you know if R.J.
25 Reynolds was the source of this particular document --
26 MS. LONG: Objection; calls for speculation.
27 BY MR. MCGUIRE:
28 Q. -- provided the document to you?

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1 A. No. If I go back to the first page, maybe I
2 can --
3 (Discussion off the record.)
4 BY MR. MCGUIRE:
5 Q. My copy of the document says that this was sent
6 to you by R.J.R. public issues on September 23, 1999, at
7 3:59 p.m.?
8 A. I'm sorry. Where are you at, sir?
9 Q. I'm on page --
10 A. Okay. Okay. I missed that. Okay. That's
11 where it came from. Okay. Well, I'm assuming that it
12 was sent directly to me from them. I don't know. I
13 don't think --

14 MR. KAMMER: I think that you'll assume that you
15 sent it to someone at that time, but he doesn't know if
16 it's to him.

17 THE WITNESS: It may have been sent to Jeanne
18 and she forwarded it to me. I don't know.

19 BY MR. MCGUIRE:

20 Q. Has R.J.R. public issues ever denied any of the
21 attributions to it on this page?

22 A. I don't know.

23 Q. Have they denied any of the attributions made
24 throughout this document?

25 A. I don't know.

26 MR. KAMMER: I'm going to object to the line of
27 questioning at this point, Mickey. It's beyond the scope
28 of the deposition and instruct the witness not to answer.

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1 MR. MCGUIRE: Is this all one?

2 MR. KAMMER: Yes. You've marked everything
3 through page something or other. 541 as exhibit --
4 excuse me. Everything through 754 has been marked as
5 4088.

6 (Whereupon, this ends the testimony deemed
7 confidential and subject to protective order entered by
8 the Superior Court of the County of Los Angeles, State of
9 California.)

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